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IN THE MATTER OF THE
POST OFFICE HORIZON IT INQUIRY

CLOSING STATEMENT

ON BEHALF OF PAULA VENNELLS

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Introduction

1. On the first day of Ms Vennells' oral evidence, Counsel to the Inquiry ("**CTI**") asked her why she had not known about the bugs and defects in Horizon before 2018. When it was suggested that she ought to have been able to work out the truth from the documents which POL held, Ms Vennells candidly accepted:

> "You're right and I didn't. There is an issue of unknown unknowns. If you don't know something exists, it's difficult to ask questions about it. That is why the importance of governance, particularly around corporate memory on bad things, rather than good things… is important to have. I simply didn't have that information."[1]

2. Throughout Ms Vennells' written and oral evidence, borne out through the documents and evidence of others which have been adduced during the Inquiry, there has been nothing to show that she acted in bad faith. Ms Vennells wanted to do right by the sub-postmasters, whose "*contribution to the continued turnaround of the Post Office cannot be overstated*".[2]

3. Ms Vennells accepts that she did not manage to uncover the truth about the matters before the Inquiry, because she herself was not told about issues which may have allowed her to do so. As she said in evidence:

> "I worked as hard as I could and to the best of my ability, and I am very sorry that I was not able to find out what the Inquiry has found out. I don't know today how much wasn't told to me. I do know information that I didn't get and I don't know, in some cases, why it didn't reach me. But my only motivation was for the best for the Post Office, and for the hundreds of postmasters that I met, and I regret deeply that I let these people down."

4. Ms Vennells apologises unreservedly to all those who are affected by the matters which this Inquiry is investigating.

5. These written submissions do not seek to address every matter with which Ms Vennells was involved and on which the Inquiry has heard evidence; Ms Vennells gave two written statements totalling 888 pages, and even those could not purport to be a complete account of all of Ms Vennells' work in respect of Horizon. Instead, these submissions address

[1] **22 May 2024 27:24-28:6 (INQ00001151)**
[2] (**POL00256015**)

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matters where, on behalf of Ms Vennells, we consider the evidence is particularly nuanced or requires a close reading of documents rather than a reliance on witness accounts. The submissions are broadly arranged in chronological order.

6. Before turning to those submissions on the chronology of Ms Vennells' involvement, Ms Vennells makes some submissions of general application.

Role of the CEO

7. The Inquiry's Governance experts described fourteen ways in which a CEO is accountable to the Board.[3] Three of those responsibilities are:

> b) Running the Company and its business, providing operational leadership, management and oversight of all functions departments and delegations;
>
> c) Creating an organisation structure, and as appropriate restructure, which is fit for purpose for the business, reflecting strategy, priorities and risk, so that appropriate operational oversight and direct management is secured and maintained;
>
> d) Ensuring an organisation structure in which all employees know to whom they are accountable, with ultimate Executive accountability resting with the CEO.

8. Ms Vennells agrees with these principles. She does not seek to avoid the reality that, as CEO, she was the holder of *ultimate Executive accountability* but that should not be confused with an obligation on Ms Vennells to make every decision personally, or even to make every key decision personally, or even to be briefed in detail on the basis for every key decision taken under some delegated authority.

9. Throughout the matters addressed in these submissions, Ms Vennells relied appropriately on briefings, reports and advice from her senior colleagues. Ms Vennells relied on IT specialists, reporting directly to her, to brief her on matters relating to Horizon integrity issues (see eg [29], [192] – [194] below); she relied on her general counsel (see [107], [120], [291], [297] below); she relied on the Company Secretary, particularly in her dealings with Second Sight, and was entitled to expect material information to be passed back to her (see [203] below); she relied on the professional opinion of the team of

[3] (**EXPG0000006/28**)

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specialists tasked with addressing the Spot Reviews within the Working Group (see [154] below).

10. That the information passed to Ms Vennells was incomplete or wrong, or that information was not passed to Ms Vennells at all, does not equate, without more, to a failure on Ms Vennells' part.

Evidence

Witnesses

11. Although not binding on the Inquiry (but nonetheless highly persuasive given the context of the Inquiry), CPR PD 57AC on *Trial witness statements in the Business and Property Courts* says this about the approach of a Tribunal to assessing witness evidence at Appendix 1.3:

> 1.3 Witnesses of fact and those assisting them to provide a trial witness statement should understand that when assessing witness evidence the approach of the court is that human memory:
>
> (1) is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but
>
> (2) is a fluid and malleable state of perception concerning an individual's past experiences, and therefore
>
> (3) is vulnerable to being altered by a range of influences, such that the individual may or may not be conscious of the alteration.

12. This reflects some of the principles set out by Leggatt J in *Gestmin SGPS S.A v Credit Suisse* [2013] EWCA 3650 (Comm). Leggatt J warned that tribunals ought:

> [22] "… to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based recollection provides any reliable guide to the truth."

13. Leggatt J instead expressed the view that *"the best approach for a judge to adopt in the trial of a commercial case"*: was *"to place little if any reliance at all on witnesses' recollection of what was said in meetings and conversations and to base factual findings on inferences drawn from the documentary evidence and known or probable facts."*

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Given the subject matter of this Inquiry, and the volume of contemporaneous documentation, particularly insofar as Phases 5, 6 and 7 are concerned, these principles are of direct application.

Documents

14. Throughout the Inquiry, CTI have shown a preference, appropriately, for the evidence of contemporaneous documents[4] rather than witness accounts of events which are one or two decades old. That contemporaneous documents are the primary source of reliable evidence in this Inquiry should be borne in mind, in two regards, when considering evidence concerning Ms Vennells.

    a. First, as Ms Vennells recognised in her written statement,[5] it is unrealistic that she might remember specific conversations and meetings during her time at POL, however weighty the subject matter. Ms Vennells' evidence was significantly based upon the documents which had been disclosed to her and which she had spent much time considering before preparing her written evidence and giving her oral evidence.

    b. Second, when witnesses have given evidence of matters relevant to Ms Vennells without there being support in contemporaneous documents, this evidence should be approached cautiously. It is inevitable, having regard to the very human desire for self-preservation, that witnesses will now seek to distance themselves from Ms Vennells (whether deliberately or unconsciously), given her portrayal in the media as being responsible for the failings of POL. For example:

        i. Ms Swinson said in her oral evidence that Ms Vennells *"knew about the Clarke Advice"*.[6] When questioned on behalf of Ms Vennells, Ms Swinson conceded that this assertion was based on a single email,[7] which Ms Swinson had not seen at the time.[8] That email does not withstand the weight which Ms Swinson seeks to load upon it.

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[4] e.g. **16 May 2023 76:3-4 (INQ00001065) 18 January 2024 85:14-16 (INQ00001116)**; **25 January 2024 12:5-7 (INQ00001120)**
[5] e.g. (**WITN01020100**) ¶1517
[6] **19 July 2024 119:10 (INQ00001178)**
[7] (**POL00372544**)
[8] **19 July 2024 125:1-127:3 (INQ00001178)**

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ii. In her oral evidence, Dame Moya Greene discussed a text message she sent to Ms Vennells on 31 January 2024 stating: "I don't know what to say. I think you knew…" (PVEN00000532). Dame Moya gave an unclear answer as to what she believed Ms Vennells knew. This comment was based solely on what she believed had come out during the Inquiry: **19 July 2024 189:1-189:25** (**INQ00001178**). A subsequent text message Dame Moya sent to Ms Vennells on 2 February 2024 (PVEN00000531) suggests that her 31 January text message may have been sent in the heat of a moment and did not reflect her view of Ms Vennells: "I am listening to the closing statements. So wrong.. so many people ruined. So many liars. What I will always say ..is you were a fabulous person ..When I could not get people paid, I called you and asked you to keep post offices open so we could get checks in hand. You did not hesitate.. you always helped."

iii. As discussed in paragraph [250] below, Lesley Sewell claims that she was angry when she discovered from the Deloitte assurance work in 2014 that Fujitsu had used a Balancing Transaction procedure to insert a transaction into branch accounts and that she escalated the matter to Ms Vennells, the GC, and Fujitsu. There is no evidence of this. What the documentary evidence does show, is that Ms Sewell was the co-author (with the GC, Mr Aujard) of an email to the Board which did not mention the Balancing Transaction function and mentioned only the helpful and positive aspects of Deloitte's conclusions.

iv. In ¶66 of his witness statement (**WITN00420100**) Ian Henderson of Second Sight stated that, in 2013, Ms Vennells "was increasingly attempting to steer us away from considering the safety of convictions". When Mr Henderson was asked about this comment in his oral evidence, he stated that he could not remember precisely what Ms Vennells did to steer Second Sight away from considering the safety of convictions: **18 June 2024: 87:11-87:25** (**INQ00001162**). Mr Henderson made a similar comment at ¶142 of his witness statement that Ms Vennells "frequently and consistently attempted to steer Second Sight away from investigating potential miscarriages of justice." When Mr Henderson was asked "In what context did Ms Vennells

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frequently and consistently attempt to steer Second Sight away from investigating potential miscarriages of justice?" he answered:

> "The first thing I'd say is we had relatively little direct contact with Paula. I mean, she certainly took part in some of the telephone calls, conference calls. The words that I'd quoted were made in evidence to the Select Committee but, through Angela van den Bogerd, and so on, and through their actions, in terms of making documents available, there was clearly a problem in Post Office's mind with the mediation of criminal convictions."[9]

The documentary evidence does not support the assertion in Mr Henderson's witness statement.

v. (**POL00101367**) is an email Ms Vennells sent to Mr Aujard and others on 17 September 2014, in which she summarised what she clearly viewed as a constructive conversation she had had with Kay Linnell of the JFSA. Ms Vennells and Ms Linnell had met by chance in Bonn airport, and the email appears to have been written on the day of the conversation. In ¶¶91-96 of her witness statement (**WITN00550100**) Ms Linnell states that the email contains statements which are "absolute rubbish" and that the email shows that Ms Vennells "recorded conversations in a completely fabricated way." These comments are based on Ms Linnell's reaction to seeing a record of a conversation that had occurred 10 years previously. Ms Vennells' email on the other hand is contemporaneous. It is submitted that the vitriol with which Ms Linnell has attacked Ms Vennells is likely to be driven by hindsight, rather than Ms Linnell's actual recollection of the conversation.

vi. In his witness statement at ¶61 (**WITN11130100**), Mr Young stated that, shortly before he left POL in 2012, he became concerned by the number of complaints by SPMs and concluded that there should be a review of the quality of the Horizon code. There is no documentary evidence that he shared his alleged concern, or the need for a review of the software code, with Ms Vennells or the Board. Indeed, his witness statement tacitly suggests that he did not: he states in ¶61 that "I was expecting to sit down with both Tait and Vennells to inform them that we needed to review the quality of the Horizon

[9] **18 June 2024 88:24-89:10 (INQ00001162)**

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Online code; however, we never met before I left POL." The last document relating to Horizon that Mr Young authored before he left POL is a draft noting paper on Horizon to the Board dating from March 2012 (**POL00142856**). The document focussed on system outages and service level deficiencies. It does not mention that Mr Young was concerned that SPM complaints might be linked to problems in the Horizon software.

vii. Sir Anthony Hooper stated in his evidence that he told Ms Vennells and, he believed, Ms Perkins, that it was unlikely that the cause of the losses suffered by POL was theft by SPMs[10] He also said[11]: "My view, and by the middle of 2014, was there was likely to have been serious miscarriages of justice. My initial view was that it was very unlikely that these people had stolen money remained." These comments are not supported by documentary evidence and in some ways are inconsistent with the documents, as addressed below at ¶[259]. It is probable that if, by the middle of 2014, Sir Anthony had been of the view that there had been serious miscarriages of justice, he would have made that position clear to those at POL, Second Sight and the JFSA.

15. It is submitted that where there is a dispute in respect of witnesses' recollections, the evidence from contemporaneous documents is likely to be of most assistance to the Inquiry.

Experts

16. The Governance expert evidence is helpful to the Inquiry in identifying and explaining guidance on governance and what the experts regard as reasonable practice in governance, management, and leadership.

17. It was not the role of the experts to establish matters of fact, and they were not instructed to do so: **12 November 2024 16:17-17:5 (INQ00001206)**. Their Second Governance Report, including their appraisals of the three case studies, was based on the experts' selection of evidence from the material to which they had been given access, including witness statements, transcripts of oral evidence and some of the underlying contemporaneous material: **12 November 2024 17:23-18:3 (INQ00001206)**. In

[10] **10 April 2024 134:12-135:6 (INQ00001127)**
[11] **10 April 2024: 174:11 – 174:14 (INQ00001127)**

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paragraph 8 of their Second Governance Report, the experts made the fair statement that: "Through our selection of evidence and cases we aim to illustrate the way board governance and executive leadership impacts matters with which the Inquiry is engaged. In being selective of themes and evidence, we appreciate there may be additional or alternative constructions based on the body of evidence before the Inquiry which we have not considered." In her oral evidence, Dame Sandra Dawson stated that the experts could not know whether they had conducted an exhaustive examination of the material in relation to the three case studies: **12 November 2024 18:19-19:7** (**INQ00001206**).

18. The experts were formally appointed on 1 December 2023, since which time a further 154,872 documents have been disclosed to Core Participants. Since they produced their first report on 26 March 2024, 89,835 documents have been disclosed. When the experts prepared their reports, and gave oral evidence to the Inquiry, they did not have the benefit of a detailed forensic analysis of (a) all of the information that was known or available to Ms Vennells; (b) the advice that Ms Vennells received from lawyers and other specialist advisors; or (c) what Ms Vennells did on the basis of that knowledge and advice. They were not therefore in a position to identify or opine on any alleged failings by Ms Vennells or other individuals at POL.

Disclosure to the Inquiry

19. Ms Vennells has extended all possible assistance to the Inquiry, transparently and in a straightforward way.

20. On 21 July 2022, the solicitor for Ms Vennells wrote to the Inquiry, stating that Ms Vennells was in possession of relevant documents which she wished to disclose pursuant to the Inquiry's Protocol on the disclosure of documents issued under the authority of the Chair on 28 July 2021 ("Disclosure Protocol"). The correspondence stated that "*rather than await a Rule 9 request, our client wishes to proactively disclose all relevant documents in her possession, custody or control pursuant to paragraph 5 of the Disclosure Protocol.*" As part of this proposed disclosure, the solicitor informed the Inquiry that they had obtained an image of Ms Vennells' mobile telephone and had obtained all emails held from her personal email account for the period 1 January 2007 to the time of writing. The letter provided the Inquiry with a list of proposed keyword

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search terms which the solicitor intended to use to interrogate that data, in order to identify material, which it was anticipated the Inquiry would wish to receive.

21. The Inquiry indicated that it did not wish to receive disclosure save in response to Rule 9 requests and did not ask for any data from Ms Vennells' electronic devices.

22. No Rule 9 request has ever been received specifically for data from Ms Vennells' electronic devices. Nonetheless, Ms Vennells disclosed a series of electronic documents to the Inquiry with her written witness evidence, where the documents were considered to be of relevance to the questions raised in that Rule 9 request for evidence (first doing so by list and giving the Inquiry the opportunity to identify which copies it wished to receive).

23. On 19 April 2024, the Inquiry disclosed the witness statement of Ms Sewell.[12] Ms Sewell mentioned, at ¶¶78-80, communications with Ms Vennells. This prompted Ms Vennells' solicitor to carry out additional targeted keyword searches against the data from Ms Vennells' devices, and further material was offered to the Inquiry. She has disclosed further batches of electronic documents, mainly communications with personal and professional associates, on a voluntary basis.

24. The Inquiry has disclosed almost 1,000 of Ms Vennells' personal documents to Core Participants. She has been transparent with the Inquiry throughout.

Beds And Remote Access – Network Period

25. In this section, Ms Vennells addresses the key incidents which shed light, or have been alleged to shed light, on her knowledge of BEDs, Horizon integrity, and remote access during her time as Network Director (January 2007 to April 2010) and COO (April to October 2010).

26. Ms Vennells' responsibilities as Network Director did not include POL's IT systems. This was the role of the Operations Director. As shown on pages 26 to 35 of an organisation chart created in 2009 (**POL00043805**), POL's IT managers and staff, including technical IT specialists, reported directly or indirectly to the then Operations

[12] **(WITN00840100)**

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Director, Mike Young. He reported directly to the MD, Alan Cook. Mr Young has confirmed that it was his responsibility to ensure that IT-related issues were resolved and that the Board was notified of IT issues which required its input or oversight.[13] Although Mr Young's title changed over time, he remained the most senior manager with responsibility for IT until he left POL in March 2012.[14]

27. Mr Young said that he was only ever aware of two BEDs in Legacy Horizon (Blue Screen errors and ISDN errors).[15] The only BEDs he was aware of in relation to HNGX were BEDs which affected the Oracle database during the test and the pilot rollout of HNGX.[16] He said he had no knowledge of any BEDs that would have caused transaction or reconciliation errors in branch accounts.[17] The only occasion mentioned in his witness statement on which he escalated concerns about Horizon integrity to the Board or the ET was when he alerted Mr Cook and the ET about the Computer Weekly article in May 2009.[18]

28. Mr Young made and supported comments which asserted that Horizon was reliable. For example:

    a. Mr Young said that he was contacted by Computer Weekly prior to the publication of the article in May 2009. He recalls providing a comment to the effect that Horizon was a reliable system and that there were no issues – a comment which Computer Weekly quoted in the article.[19] The only comment from POL in the article (**POL00041564),** which must therefore be the comment from Mr Young, states as follows:

> "Horizon is an extremely robust system which operates over our entire Post Office network and successfully records millions of transactions every day. There is no evidence that points to any fault with the technology. We would always look into and investigate any issues raised by sub-postmasters.'"

[13] MY WS ¶¶23; 28(**WITN11130100**)
[14] Ms Sewell confirms in her witness statement at ¶6 that, as Head of IT & Change, she reported to Mr Young until he left POL in 2012.(**WITN00840100**)
[15] MY WS ¶¶37-41 (**WITN11130100**)
[16] MY WS ¶¶42-48 (**WITN11130100**)
[17] MY WS ¶102 (**WITN11130100**)
[18] MY WS ¶¶58-59; 75-77 (**WITN11130100**)
[19] MY WS ¶¶58-59 (**WITN11130100**)

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b. During his oral evidence, it was put to Mr Young that he supported the "robust lines" given to Parliament in 2011 in support of Horizon: **15 October 2024 123:5-123:21 (INQ00001196)**. The document to which Mr Young was taken during this part of his evidence (**POL00295067**) shows that, on 18 November 2011, Mr Young approved the "approach and wording" of a draft letter from Ms Vennells (as the MD) in response to parliamentary questions by Mike Weir MP (**POL00295066**).

c. The letter from Ms Vennells that was sent to Mr Weir MP on 1 December 2011 (**POL00001976**) stated that Horizon had been "rigorously tested" and that "there is no evidence at all that the Horizon system has in some way been at fault with respect to any financial irregularities discovered in a subpostmaster's account and no cases have been abandoned for reason of any doubt about that system".

29. Ms Vennells refers to these documents, not to single out Mr Young but to illustrate a fundamental point about her position in relation to IT, both as Network Director and in her subsequent roles. Ms Vennells had no background in IT and was never employed by POL in an IT role. POL had an IT department, which included IT technical specialists, and senior managers (e.g. Mr Young and later Ms Sewell) whose role was to keep the Board and the ET informed of important IT matters. Ms Vennells relied, and submits that she was entitled to rely, on POL's IT function to provide accurate information to her, to the Board, and to the ET, in relation to the Horizon integrity issues.

The Computer Weekly article in May 2009

30. Ms Vennells has said that she was not aware of allegations that Horizon contained BEDs or lacked integrity until the publication of the Computer Weekly article in May 2009.[20] Although a document disclosed after she made her first witness statement shows that Ms Vennells was informed in April 2009 that three MPs had challenged Horizon in correspondence, the evidence shows that Ms Vennells is correct that she was not aware of allegations of Horizon integrity until around the time of the Computer Weekly article:

a. Two documents written by senior POL managers strongly suggest that allegations about Horizon integrity had little prominence in the business between 2007 and mid-2009. In 2009, David Smith wrote that the success of POL's claim against Lee

[20] PV WS 1 ¶¶112 (**WITN01020100**)

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Castleton in January 2007 had "'killed' the noise" until the Computer Weekly article appeared in May 2009 (**POL00090575**). An email by Alan Cook on 15 October 2009 (**POL00165911**) suggests that he regarded concerns about Horizon integrity as a recent development: "For some strange reason there is a steadily building nervousness about the accuracy of the Horizon system and the press are on it as well now. It is the more strange in that the system has been stable and reliable for many years now and there is absolutely no logical reason why these fears should now develop."

b. There appear to be no records of the Board or the ET discussing allegations about BEDs or Horizon integrity between January 2007 and mid-2009. It is Mr Young's evidence that he was not aware of concerns about Horizon integrity until he was contacted by Computer Weekly shortly before the publication of the article in May 2009.[21]

c. The first indication in the documents of Ms Vennells being made aware of concerns about Horizon integrity is a comment in the Network Functional Report for April 2009 (**POL00095533**) that: "We have had our 3rd request in the past few months from individual MPs on behalf of subpostmasters relating to Horizon integrity (Legal advice is that we have no reason to doubt the system's integrity and this has been tested in the courts)."

d. An email dated 15 April 2009 from Mark Wright to Ms Vennells (**POL00378170**) contains answers to questions from Ms Vennells about the April 2009 board pack. While Ms Vennells' questions do not appear in disclosure, Mr Wright's email contains an explanation of what was meant by "Horizon integrity": "this involves cases where a small number of MP's (3) have sought to challenge on behalf of suspended subpostmasters the integrity of Horizon on the back of losses / accounting issues."

31. Mr Wright's email suggests that Ms Vennells had queried the comment about Horizon integrity in the Network Functional Report because she was unfamiliar with the issue.

[21] MY WS ¶59 (**WITN11130100**)

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32. The Computer Weekly article was published on 11 May 2009 (**POL00041564**). The article was based on case studies of seven SPMs (including Alan Bates, Lee Castleton and Jo Hamilton) who claimed that the Horizon system had caused the shortfalls for which POL had pursued them for repayment. As mentioned above, it included a comment from POL which can only have come from Mr Young:

> "Horizon is an extremely robust system which operates over our entire Post Office network and successfully records millions of transactions every day. There is no evidence that points to any fault with the technology. We would always look into and investigate any issues raised by sub-postmasters.'"

33. Ms Vennells does not remember reading the Computer Weekly article in 2009 but believes that she did so, as it was usual to circulate media clippings to the ET.[22] She recalls that Mr Young discussed the article at an ET meeting and that he gave assurances that the article was not a cause for concern and that there was nothing wrong with the system.[23]

34. Mr Young agrees with Ms Vennells that he spoke about the article at an ET meeting. Though his recollection differs as to how he characterised Computer Weekly at the meeting[24], he does not appear to deny stating words to the effect that there was nothing wrong with the system. It is likely that he did so. Since the Computer Weekly article was the first significant public challenge to the Horizon system in years, and the first that Mr Young was aware of, it would have been odd if Mr Young had not given the ET his view on the validity of the allegations. Furthermore, Mr Young had vouched for the reliability of Horizon in his comment to Computer Weekly.

The Porteous correspondence in May 2009

35. Shortly before the publication of the article, Mr Cook was asked by Robert Porteous, Private Secretary to the Minister for Employment and Postal Affairs, to look into allegations that Rebecca Thomson, the author of the Computer Weekly article, had raised with her MP, Brian Binley:

[22] PV WS1 ¶115 (**WITN01020100**)
[23] PV WS1 ¶113-115 (**WITN01020100**)
[24] PV WS ¶113-114 (**WITN01020100**); MY WS ¶59-60; 75-77 (**WITN11130100**)

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a. On 10 February 2009, Ms Thomson sent an email to Mr Binley MP (**POL00027890**) stating that she had talked to several current and former SPMs "who say that random flaws in the IT are causing deficits in their weekly accounts" and that "instead of listening to their problems and investigating the software or equipment [POL] is making them pay back this money without any investigation into what is going wrong."

b. On 24 February 2009, Mr Binley MP wrote to the minister, Pat McFadden MP, enclosing a copy of Ms Thomson's email (**POL00027890**) and asking the minister to address the points she had raised. Mr Porteous wrote to Mr Cook on 30 April 2009 enclosing Mr Binley MP's letter and Ms Thomson's email (**POL00027890**). He asked Mr Cook to look into the matters raised by Ms Thomson and to reply to Mr Binley MP directly. The letter was stamped as received by Mr Cook's office on 7 May 2009.

c. On 7 May 2009, Michele Graves (POL Executive Correspondence Manager) emailed Mr Porteous's letter to Andy McLean (the Head of Service Delivery in the Operations department), stating that she was keen to have a "robust response" given the potential for publicity (**POL00114930**). Subsequent emails in the chain at **POL00114930** show that it was intended that Mr Mclean would work on POL's reply to Mr Binley MP with assistance from POL and RMG legal. Ms Vennells is not copied into the chain and is not mentioned in it. There is no evidence that she saw the letter from Mr Porteous, or that she was consulted about or saw POL's response.

d. Mr Cook wrote to Mr Binley MP on 22 May 2009 (**POL00130687**). He stated that "No evidence…has been found that shows the Horizon system has caused the errors to occur" and that "I am satisfied that there is no evidence to doubt the integrity of the Horizon system and that it is robust and fit for purpose."

36. Mr Cook stated in his witness statement that Ms Vennells and Mr McLean were fully aware and supportive of POL's response to the letter from Mr Porteous, though he conceded that he could not remember what POL's response to the letter was.[25] It is

[25] Alan Cook WS ¶83 (**WITN00190100**)

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submitted that little weight should be placed on this comment, made 15 years after the events with no evidence to support it.

37. Mr Cook gave generally unreliable evidence about Ms Vennells' role. He suggested in his oral evidence that it is likely that Ms Vennells authorised POL's legal expenditure for its claim against Mr Castleton in 2006: **12 April 2024 104:7-105:14 (INQ00001129)**. This is impossible: Ms Vennells did not join POL until January 2007, by which time the trial in the Castleton case had almost concluded.[26] Mr Cook also seems to have believed or assumed, erroneously, that Ms Vennells worked in Operations and, therefore, that it was part of her role to alert the Board to the existence of BEDs: see **12 April 2024 176:12-176:19 (INQ00001129)**.[27] It is clear from the documents that the task of putting together a response to the Porteous letter was allocated to Mr McLean, who was a senior IT manager. There is no evidence that Ms Vennells was involved.

38. Whether or not Horizon had integrity was beyond Ms Vennells' managerial role and expertise. To the extent that Ms Vennells was explicitly supportive of POL's response to Mr Binley MP (for which there is no documentary evidence) it could only have been on the basis that POL believed that its statements about the reliability of Horizon were accurate.

The Ismay Report

39. On 10 August 2010, Rod Ismay (head of P&BA) produced a report entitled "Horizon – Response to Challenges Regarding Systems integrity" (**POL00090574**) (the "**Ismay Report**"). The executive summary to the Ismay Report asserted that POL could be confident in the integrity of Horizon:

> "The allegations to which we are responding follow on from cases where thousands of pounds were missing at audit. We remain satisfied that this money was missing due to theft in the branch - we do not believe the account balances against which the audits were conducted were corrupt.

[26] The hearing dates in the trial were 6th, 8th, 11th, 12th, 13th December 2006; 11th January 2007. Judgment was handed down on 22 January 2007.

[27] Mr Cook stated "…the Operations Team, whether that was David Miller, Ric Francis or Paula Vennells, they attended lots of different meetings. I do not recall them doing that, [drawing his attention to BEDs] no." Mr Miller was the former COO of POL who retired in 2006, before Ms Vennells joined in 2007. Mr Francis was Mr Young's predecessor as Operations Director.

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> POL has extensive controls spanning systems, processes, training and support. Horizon is robust, but like any system depends on the quality of entries by the users. Horizon Online builds on this and brings benefits to running costs and change management. It is not being done because of any doubt about the integrity of Horizon.
>
> The integrity of Horizon is founded on its tamper proof logs, its real time back ups and the absence of "backdoors" so that all data entry or acceptance is at branch level and is tagged against the log on ID of the user. This means that ownership of the accounting is truly at branch level."

40. The Ismay Report was commissioned by Dave Smith, the MD. [28] The essence of Mr Smith's instruction to Mr Ismay (which was not recorded in writing) was to compile reasons that gave reassurance about Horizon. Mr Ismay was not asked to investigate the allegations about Horizon and based the Ismay Report on what he was told by others, including Mr Jenkins of Fujitsu.[29] Mr Ismay accepted that he had not, as he had stated in the Ismay Report, conducted an "objective, internal review" and that it should be characterised as a "summary of existing conclusions".[30]

41. Ms Vennells was not involved in commissioning the Ismay Report and Mr Ismay did not consult her during its preparation. She was not included in the distribution list for the Ismay Report. She cannot recall seeing it at the time of its production and there is no documentary evidence to suggest that she or the wider ET received a copy.[31] Mr Young, who did see the report, states that, at the time, it solidified his view that there was not a technical problem with Horizon.[32] He states that he recalls discussing the Ismay Report at an ET meeting "which at the time, provided us with comfort that there was not an IT issue."[33] Although there are no documents which record this discussion, it is plain from Mr Young's evidence that he recalls discussing the Ismay Report with the ET as a document which gave comfort to the business that there were no technical problems with the Horizon system.

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[28] **11 May 2023 101:3-101:23 (INQ00001063)**
[29] **11 May 2023 107:8-108:13 (INQ00001063)**
[30] **11 May 2023 110:18-110:24 (INQ00001063)**
[31] PV WS 1 ¶253 (c) (**WITN01020100**)
[32] MY WS ¶92 (**WITN11130100**)
[33] MY WS ¶94 (**WITN11130100**)

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The Receipts and Payments Mismatch Bug

42. The Receipts and Payments Mismatch bug in HNGX was discovered in September 2010, shortly before Ms Vennells became MD. It affected up to 62 branches, with two branches being impacted twice.

43. **POL00028838** is a paper prepared by Fujitsu dated 29 September 2010 for a meeting with POL to discuss the Receipts and Payments Mismatch bug (the "**Receipts and Payments Mismatch Paper**"). The Fujitsu staff at the meeting were Mike Stewart, John Simpkins, Gareth Jenkins, and Mark Wright. The attendees from POL identified in the paper include Alan Simpson (Security); Julia Marwood (Network); Ian Trundell (IT), and Andrew Winn (P&BA).

44. The Receipts and Payments Mismatch Paper described the effect and impact of the bug as follows:

> "Discrepancies showing at the Horizon counter disappear when the branch follows certain process steps, but will still show within the back end branch account. This is currently impacting circa 40 Branches since migration onto Horizon Online, with an overall cash value of circa £20k loss. This issue will only occur if a branch cancels the completion of the trading period, but within the same session continues to roll into a new balance period.
>
> .....
>
> • The branch has appeared to have balanced, whereas in fact they could have a loss or a gain. • Our accounting systems will be out of sync with what is recorded at the branch • If widely known could cause a loss of confidence in the Horizon System by branches • Potential impact upon ongoing legal cases where branches are disputing the integrity of Horizon` Data • It could provide branches ammunition to blame 'Horizon for future discrepancies."

45. Ms Vennells says that she was not told about the existence of the bug until May 2013. Her position is supported by the evidence. No witness at the Inquiry has claimed to have escalated knowledge of the bug to Ms Vennells, the Board or the ET, prior to May 2013, nor is there any documentary evidence showing that anyone did so. Mr Young and Ms Sewell accepted during their evidence that they did not escalate their knowledge of the bug when they first became aware of it.

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46. Mr Young agreed that he was first informed about the bug in February 2011, several months after its discovery: **15 October 2024 61:18-62:20** (**INQ00001196**). Mr Young also accepted that he did not tell the Board about the bug. His explanation was that he believed that the bug had been detected during the pilot of HNGX and not in the live system: **15 October 2024 65:15-73:3** (**INQ00001196**).

47. Ms Sewell was aware of the bug by 4 March 2011 (**POL00029611**). On 25 June 2013, Ron Warmington of Second Sight asked POL for clarification of whether anyone at Board level had been informed of the existence of the bug in 2010 (**POL00029618**). Ms Sewell replied to Simon Baker and Alwen Lyons on the same day that:

> "I don't know if it went higher than Mike, Andy M also managed the service at the time, and if I remember correctly Mark Burley was also involved. I can't say whether we said anything to the press. Other points, our Board at the time would have been Royal Mail as we didn't have an independent Board. Paula would have been Network Director at the time with Dave Smith as MD."

48. It is clear from this email that Ms Sewell did not tell Ms Vennells about the bug in 2011. Indeed, Ms Sewell stated in her oral evidence that she did not escalate her knowledge of the bug at all: she explained that her reporting line for the management of faults was to Mr Young, via Mr McLean, and Mr Young already knew about the problem: **16 May 2024 48:25-49:12** (**INQ00001148**).

Remote access 2007-2011

49. The evidence before the Inquiry establishes that:

    a. Between 2008 and 2010 a number of POL managers, including Andrew Winn (P&BA), Mr Ismay (the head of P&BA), and Angela Van Den Bogerd (then a senior Network manager), were made aware that Fujitsu had the power, or a potential power, to change branch accounts remotely without the authority or knowledge of the affected SPMs.

    b. This information was not passed on to the Board or to Ms Vennells.

    c. On the contrary, as set out below, the message given internally to POL's senior management was that it was not possible to make changes to branch accounts without the knowledge or consent of the relevant SPM.

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50. The Receipts and Payments Mismatch Paper revealed that Fujitsu had the ability, and was prepared in principle, to use remote access powers to adjust branch accounts without the knowledge or consent of SPMs. The first of three proposed solutions in the Paper to remove the impact of the bug was as follows:

> "SOLUTION ONE - Alter the Horizon Branch figure at the counter to show the discrepancy. Fujitsu would have to manually write an entry value to the local branch account.
>
> IMPACT - When the branch comes to complete next Trading Period they would have a discrepancy, which they would have to bring to account.
>
> RISK- This has significant data integrity concerns and could lead to questions of "tampering" with the branch system and could generate questions around how the discrepancy was caused. This solution could have moral implications of Post Office changing branch data without informing the branch."

51. One of the POL recipients of the Receipts and Payments Mismatch Paper, Mr Winn (P&BA), was already aware by October 2010 that Fujitsu could adjust branch accounts remotely. On 15 October 2008, Andrew Lusher (Network) had emailed Mr Winn about a suspended SPM named Graham Ward (**POL00029710**). Mr Ward had claimed that "on a number of occasions figures have appeared in the cheques line of his account. He suspects that these have been input to his account electronically without his knowledge or consent".

52. Mr Winn responded on 23 October 2008:

> "The only way POL can impact branch accounts remotely is via the transaction correction process. These have to be accepted by the branch in the same way that in/out remittances are I guess. If we were able to do this, the integrity of the system would be flawed. Fujitsu have the ability to impact branch records via the message store but have extremely rigorous procedures in place to prevent adjustments being made without prior authorisation – within POL and Fujitsu. These controls form the core of our court defence if we get to that stage. He makes a casual accusation that is extremely serious to the business– as usual he should either produce the evidence for this or withdraw the accusation."

53. Mr Winn gave evidence to the Inquiry on 3 March 2023 that he imagined that he had asked Fujitsu about remote access after he received Mr Lusher's email and that information from Fujitsu formed the basis of his response to Mr Lusher on 23 October

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2008: **3 March 2023: 117:3-117:8** (**INQ00001059**). However, Mr Winn did not satisfy himself as to the security of the Fujitsu access controls to which he referred in his email to Mr Lusher and he agreed with CTI that he could not be satisfied that the controls were effectively monitored by Fujitsu: **3 March 2023 117:9-117:14** (**INQ00001059**). Mr Winn accepted that he should have carried out an investigation into Mr Ward's claims, but agreed with CTI that there is no evidence that he did so: **3 March 2023 119:1-119:15** (**INQ00001059**). He said he was unaware that Fujitsu's third line support routinely used their ability to go into Horizon in a way which Richard Roll (the Fujitsu whistleblower) described as "off piste": **3 March 2023 117:15 to 117:25** (**INQ00001059**). Overall, Mr Winn said that he was unhappy with how he had dealt with Mr Ward's claims that his branch accounts had been changed remotely: **3 March 2023 121:10 to 121:18** (**INQ00001059**).

54. Mr Winn stated that, when the Receipts and Payments Mismatch bug came to light in 2010, he did not draw a link between Solution One in the Receipts and payments Mismatch Paper and Mr Ward's claim in 2008 that his branch data could be altered without his knowledge: "I think there's a difference between entering data to resolve a problem rather than what implication was for Mr Ward of somebody introducing cheques for no apparent reason." Accordingly, Mr Winn did not conduct any investigation into Mr Ward's situation after he saw the Receipts and Payments Mismatch Paper: **3 March 2023 135:5** to **135:22** (**INQ00001059**).

55. The Receipts and Payments Mismatch Paper led to an email discussion about remote access in November and December 2010: **POL00088956**. The context of the thread is that, in November-December 2010, POL was in communication with the Department for Business Innovation and Skills ("**BIS**") concerning the JFSA's complaints about Horizon:

    a. In the first email in the chain, at 17:31 on 17 November 2010, Mike Granville (Head of Regulatory Strategy) sent Mr Ismay and Ms Hobbs (Network) a "response note" to follow up on a meeting with Mike Whitehead (a BIS official) about the JFSA and asked them for comments.

    b. The second email is from Ms Hobbs to John Breedon on 3 December 2010 at 18:16. Ms Hobbs forwarded to Mr Breedon the first email in the chain and copied into her

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email what she described as "My reply to Mike [Granville] and Rod [Ismay]". This stated:

> "I …have just one observation.
>
> I found out this week that Fujitsu can actually put an entry into a branch account remotely. It came up when we were exploring solutions around a problem generated by the system following migration to HNGX. This issue was quickly identified and a fix put in place but it impacted around 60 branches and meant a loss/gain incurred in a particular week in effect disappeared from the system. One solution, quickly discounted because of the implications around integrity was for Fujitsu to remotely enter a value into a branch account to reintroduce the missing loss/gain. So POL can't do this but Fujitsu can."

c. Ms Hobbs added in her email to Mr Breedon:

> "This is the last email exchange I had with Mike Granville about the BIS meeting. The attached documents were what Mike was proposing to send to Mike about the whole 'remote access to Horizon' issue. This was being looked into by Andy McLean and Mark Burley. The view being expressed was that whilst this may be possible it's not something we have asked Fujitsu to provide. I don't know what the outcome was."

d. On 5 December 2010 at 21:50, Mr Breedon forwarded the entire thread to Ms Van Den Bogerd (cc. Sue Huggins, Tracy Marshall, Lin Norbury, Andy Bayfield, and Mike Granville) with the comment: "Further to my voicemail message on Friday please find below the email I have received from Lynn Hobbs". Mr Breedon attached a copy of the Ismay Report to his email to Ms Van Den Bogerd.

56. **POL00294728** is an email dated 5 January 2011 from Ms Marshall to Kevin Gilliand, Ms Van Den Bogerd and Helen Rose re: "Horizon system issues". Ms Marshall had talked to Mr Maclean and Dave Hulbert and "made progress with the outstanding questions raised." The second question was whether "POL or Fujitsu having remote access to individual horizon systems". Ms Marshall's answer was as follows:

> "POL cannot remotely access systems and make changes to specific stock units etc. Fujitsu can remotely access systems and they do this on numerous occasions on a network wide basis in order to remedy glitches in the system created as a result of new software upgrades.

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> "Technically, Fujitsu could access an individual branch remotely and move money around however this has never happened yet. The authority process required and the audit process are robust enough to prevent this activity from being undertaken fraudulently. The authority process itself would take several days and would require a number of representatives from the business to provide concurrence to the activity (including Head of Network Services). If a change were made remotely and to an individual branch it would be flagged on the business' data ledgers and would appear as a `mismatch' in P & BA in chesterfield. P & BA would then investigate to determine whether the mismatch was authorised internally or not. So although changes can be made remotely, they would be spotted and the person making the change would be identified."

57. These documents show that, by 5 January 2011, a substantial number of POL managers had been made aware that Fujitsu had an ability to change branch accounts remotely and could do so without the knowledge or consent of the SPM. There is no evidence that any of these managers escalated their knowledge to the Board or the ET. It is clear from the oral evidence of two of the most senior managers involved – Mr Ismay and Ms Van Den Bogerd – that they did not escalate their knowledge.

58. Mr Ismay accepted that he should have revisited the statements in the Ismay Report that there were no "back doors" in Horizon in light of Ms Hobbs' message to him in November/December 2010: **11 May 2023 181:2-184:4** (**INQ00001063**). He offered no explanation for his failure to do so, other than that he could not recall receiving the message from Ms Hobbs.

59. Ms Van Den Bogerd gave the following evidence about her knowledge of remote access in 2010/2011:

    a. ¶19 of her witness statement (**WITN09900100**) states that she did not recall receiving the email from Mr Breedon on 5 December 2010 and that she had no knowledge that Fujitsu had remote access powers prior to 2011: **25 April 2024 34:1** to **36:5** (**INQ00001136**).

    b. Ms Van Den Bogerd appeared to accept that she was aware of the contents of Ms Marshall's email dated 5 January 2011 from when she received it. On 6 January 2011, Ms Van Den Bogerd and Mr Gilliland (who was also copied into Ms Marshall's 5 January email) interviewed a SPM called Rachpal Athwal: **POL00294743.** During the interview, Mrs Athwal's husband asked whether POL

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could manipulate the figures on Horizon "behind the scenes". Mr Gilliland and Ms Van Den Bogerd told him that it was not possible for POL to do this. They did not mention that they knew that Fujitsu had this power.

c. Ms Van Den Bogerd told the Inquiry that she did not volunteer the information about remote access from Ms Marshall's email to Mr Athwal because she did not understand the technical aspects and Mr Gilliland was the more senior person: **25 April 2024 73:12** to **74:7** (**INQ00001136**).

d. Ms Van Den Bogerd accepted that the email from Mr Breedon on 5 December 2010 was inconsistent with the statements in the Ismay Report that there were no 'backdoors' into Horizon: **25 April 2024 41:5 to 43:14** (**INQ00001136**). However, whatever the Inquiry makes of Ms Van Den Bogerd's evidence that she has no recollection of Mr Breedon's email, it is obvious that she did nothing to escalate what she knew about Fujitsu's remote access powers to the Board or the ET.

60. On 26 November 2010, Mr Granville sent the email at (**POL00120561**) to, among others, Ms Vennells (now the MD), Mr Young and Mr Ismay. Mr Granville stated that following a meeting between Ed Davey MP, a minister in BIS, and the JFSA, Mike Whitehead (a senior ShEX manager with responsibility for POL) had met Mr Ismay, Ms Hobbs and Mr Granville. Mr Granville attached to the email a briefing document for BIS with the file name "JFSA response issues for BIS2.doc" which he described as a draft that he intended to send to BIS "to go back to Mike on some of the points that were raised".[34]

61. On page 9 of (**POL00120561**), which is within the attachment, there is a response from POL to the allegation that: "POL can access the system remotely and make changes to it."

> "The system is based on a user log in, and all actions have to be endorsed by the user. POL cannot remotely control a branches system. Any technical changes by Fujitsu that impact the system have to go through the clearance processes which

[34] It is highly likely, given the timing, the file name of the attachment, and Mr Granville's description of the attachment, that the attachment to Mr Granville's email on 26 November 2010 is either the same document or a later draft of the document that Mr Granville emailed to Mr Ismay and Ms Hobbs in 17 November 2010 in the email chain at **POL00088956** ("further to the meeting with Mike Whitehead about the JFSA – I am aiming to send this broad response note…").

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> would prevent any amendment to existing data. The independent audit file is in place and can show all the system activity in a particular branch."

62. Ms Vennells states that she does not recall this document.[35] However, it gives no impression of what some POL managers knew about remote access by 26 November 2010. It states that "all actions have to be endorsed by the user" and Fujitsu is mentioned only in relation to "technical changes". No-one reading the document would have understood that, in fact, Fujitsu had the ability to change branch accounting data remotely without the knowledge of SPMs.

63. Ms Vennells further submits that, as a result of the failure of Mr Ismay, Ms Van Den Bogerd and others to escalate their knowledge, she was not made aware that Fujitsu could alter branch accounts using remote access and do so without the knowledge or consent of an affected SPM.

The 2010/2011 E&Y Audit Of The Fujitsu Control Environment For Horizon

64. E&Y's audit of the control environment at Fujitsu for the financial year ended 27 March 2011 was a first and a last in several respects. It was the first audit of a full accounting year following the migration to HNGX and the first audit following Ms Vennells' appointment as MD in October 2010. It was also the last pre-separation audit in which E&Y audited POL's accounts and the Horizon controls as part of their audit of Royal Mail Group Holdings PLC. It was therefore the last occasion on which the results of E&Y's audit of POL were formally presented to RMG, as opposed to POL.

65. E&Y's letter to POL management on internal control matters (**POL00030217**) reported weaknesses in the IT governance and control framework, particularly in relation to Fujitsu and Horizon, and made recommendations for improvements. The executive summary of the letter broke these down into four categories: (a) improvements to the governance of outsourced applications; (b) improvements to the segregation of duties in the software change management process; (c) the need to strengthen the change management process; and (d) the need to strengthen the review of privileged access.

[35] PV WS 1 ¶1272 (**WITN01020100**)

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66. E&Y's detailed observations included, on page 33 of the management letter, that "there are inappropriate system privileges assigned to the APPSUP role and the SYSTEM_MANAGER role at the Oracle database level on the Branch Database served (BDB) supporting HNGX." The risk associated with this weakness was that "Unrestricted access to privileged IT functions increases the risk of inappropriate/unauthorised access which may lead to the processing of unauthorised or erroneous transactions." Ms Vennells was aware that E&Y had identified control weaknesses around Horizon and made recommendations for improvement:

    a. Ms Vennells received a briefing document on the E&Y audit (**FUJ00086922**) which appears to have been prepared by Fujitsu in April 2011 with input from Ms Sewell.[36] Although Ms Vennells does not recall reading the briefing, she believes that she did so.[37] E&Y's audit findings and recommendations were summarised in Appendix A of the briefing. These included that a "review of privileged access for administration and technical resources" was a high priority.

    b. The minutes of the POL Board meeting on 27 May 2011(**POL00021499**) record that the auditors had raised concerns about access controls and that POL had commenced work to remedy the issues raised in the audit, including by establishing what the minutes describe as the "POL Audit & Control Board." Ms Vennells has described the role and the work of what is more accurately called the IT Steering Group in PV WS 1 ¶¶172-174 (**WITN01020100**).

    c. Although she can only recall some of the topics discussed, Ms Vennells discussed the audit with Mr Young and Ms Sewell.[38]

67. The mention of the APPSUP role in E&Y's management letter has significance viewed from the perspective of today, since Fraser J found in the Horizon Issues Judgment that Fujitsu used this privilege to make changes to branch accounts without the knowledge of the affected SPMs. Ms Vennells' evidence is that she did not know, because she was not told, that the existence of the APPSUP role created this risk to the integrity of the

[36] The briefing was emailed by Don Burgess to Bill Membery and Mark Arnold, all of Fujitsu, on 28 April 2011 (**FUJ00086923**). Mr Burgess stated in the email that "following revision with Lesley, this has been expanded to provide Paula Vennells with enough information to handle questions that may arise from RMG regarding the audit. to support this more non-technical description and examples have been included".
[37] PV WS1 ¶163 (**WITN01020100**)
[38] PV WS1 ¶¶168-169 (**WITN01020100**)

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accounting data held in the system. It is submitted that the Inquiry should accept Ms Vennells' evidence:

a. The audit was discussed at the RMG Audit and Risk Committee (the "**RMG ARC**") on 20 May 2011 (**RMG00000005**). Ms Vennells was not a member of the RMG ARC and was not therefore present at the meeting. Ms Sewell, Mr Young, and Alison Duncan from E&Y joined the meeting for the discussion about the IT audit of Horizon. Ms Duncan spoke about the control weaknesses identified during the audit, and the need for improvement by Fujitsu and a change of approach by POL to the management of the Fujitsu contract. Ms Duncan also stated that Fujitsu had caused the audit to be unduly lengthy, unpredictable and inefficient. Mr Young is recorded as noting that the recent re-negotiation of the contract had offered POL costs and efficiency savings, though he accepted that POL had not demanded SAS70-quality evidence from Fujitsu.

b. There was a further discussion of the audit at the meeting of the RMG ARC on 8 December 2011. The minutes (**RMG00000003**) record that the meeting was attended by Mr Day, Ms Sewell, Mr Ismay, and Mr Meadows from POL and three attendees from E&Y. The summary of the update to the RMG ARC on Horizon controls and the relationship with Fujitsu records that:

> "A number of IT control issues were identified during the 2010-2011 year end audit, which were largely centred on Fujitsu. Overall EY was satisfied that the control systems were reliable but they had to perform additional audit work to make this conclusion and they made certain recommendations in the management letter following the audit for improvements which have been implemented. The IT control issues identified during the audit did not relate to the integrity of accounting data in the system. Rather, EY made recommendations about the documentation and authorisation of changes to systems and about opportunities for streamlined assurance."

c. The minutes do not record who made these comments. It is likely they were made by E&Y or by one of the POL attendees. There is no hint in the documents that anyone at E&Y or POL dissented from or questioned the opinion stated at the meeting that the audit issues did not relate to the integrity of the accounting data.

d. Ms Vennells says that she understood that the control issues at Fujitsu did not compromise the accounting data. She recalls Mr Young telling her at some point

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that while Fujitsu had not got all of the control documentation right, and that these matters needed to be improved, the audit was not a major crisis.[39] The Inquiry should accept this evidence. It is highly likely that Ms Vennells was given the same headline messages about the audit that the RMG ARC was given at its meetings on 20 May and 8 December 2011 (at which she had not been present).

e. The Inquiry should treat with scepticism Mr Young's recollection that he was concerned at the time that inadequate controls over privileged access had implications for the integrity of the accounting data: **15 October 2024 85:23-86:1** (**INQ00001196**). Mr Young attended the meeting of the RMG ARC on 8 December 2011 at which it was told that the audit findings did not relate to the integrity of the data. If he had believed that the RMG ARC was being misled or misinformed, he should have alerted the RMG ARC and the POL Board. There is no documentary evidence that he did so. Indeed, Mr Young did not claim in his written and oral evidence that he escalated his concerns to the Board or the ET.

f. Ms Vennells gave oral evidence that it is unlikely that she would have understood at the time – without advice from an IT expert – that E&Y's comments about the APPSUP role showed that Fujitsu could make changes to branch accounts without the authorisation of SPMs: **22 May 2024 156:10-159:7** (**INQ00001151**). The Inquiry should accept this evidence.

g. The Inquiry can also be confident that Ms Vennells is right that she was not told that the APPSUP role could potentially be used to make unauthorised changes to branch accounts.[40] There is no evidence that she was told. It is clear from Mr Young's evidence why he did not tell Ms Vennells. He knew that, as with most IT systems, it was possible to gain access to the system remotely and that Fujitsu could make changes to branch accounts with SPMs' consent. However, he had "no belief, understanding or even inkling" that Fujitsu made changes to branch accounts without the authorisation of SPMs.[41]

[39] PV WS1 ¶168 (**WITN01020100**)
[40] Dame Moya Greene, then the CEO of RMG, stated in her oral evidence that she was not told in any detail in 2011/2012 about Fujitsu's ability to access Horizon remotely: **19 July 2024 151:8-152:3** (**INQ00001178**).
[41] MY WS ¶53 (**WITN11130100**). Simon Baker, who reported to Ms Vennells as part of the team working on the Second Sight review in 2012-2013 gives similar evidence in his witness statement at ¶¶31; 71 (**WITN04730100**).

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h. Accordingly, Ms Vennells was not told that there was a risk that Fujitsu could use its APPSUP privileges to tamper with branch data because Mr Young did not himself appreciate that this was a real risk.

Advice On Prosecutions

68. Ms Crichton was appointed as POL's first Head of Legal in January 2010, eight months before Ms Vennells became MD in September 2010: Crichton WS ¶10 (**WITN00220100**). Prior to separation from RMG, prosecutions and civil claims brought in the name of POL had been managed by RMG legal and been subject to the oversight of the RMG GC. Ms Crichton had no role in overseeing prosecutions in the pre-separation period (WS ¶¶39-40 (**WITN00220100**); **24 April 2024 1:20-2:20 (INQ00001135)**).[42]

69. Ms Crichton had no recollection of the Board discussing prosecutions prior to separation (WS ¶40) (**WITN00220100**). She said that, between 2010 and early 2012, information about POL prosecutions and civil cases against SPMs was "not ordinarily" provided to the Board (WS ¶47) (**WITN00220100**). There is no evidence that the ET or the Board discussed prosecution policies, the conduct of prosecutions and civil claims, or any individual criminal or civil cases prior to the run up to separation in late 2011 and early 2012. The Board was not given any formal briefing on POL's prosecutorial role when POL took over responsibility for the conduct of prosecutions from RMG upon separation: see the evidence of Ms Lyons on **21 May 2024 30:22- 32:13 (INQ00001150)**.

70. The Board started to receive Significant Litigation Reports from Ms Crichton in December 2011 in preparation for POL's separation from RMG: **24 April 2024 51:12-51:25 (INQ00001135)**. The Report for the December 2011 Board meeting (**WITN00740125**), discussed four letters before action from former SPMs alleging "wrongful termination of contract (based on alleged failings in POL's processes and computer systems)." The Report advised that "The considered legal view is that the claimants are unlikely to succeed". Nevertheless, Richard Morgan QC had advised that if a large number of similar claims were issued in County Courts, "the quality of the judges would be unpredictable making it more likely that one or two cases might be lost."

[42] See also Ms Perkins' witness statement at ¶54 (**WITN00740100**).

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71. This was a quotation from a Bond Pearce file note of a conference with Mr Morgan QC on 26 October 2011 attended by three RMG lawyers and two solicitors from Bond Pearce (**POL00107695**). Ms Crichton did not provide the Board with a copy of the file note: AP WS ¶103 (**WITN00740100**); PV WS1 ¶215 (**WITN01020100**). Ms Crichton says that RMG legal and Bond Pearce were dealing with the Shoosmiths cases and that she did not know the details of Mr Morgan QC's advice: SC WS ¶106 (**WITN00220100**).

72. At the January 2012 Board meeting, Les Owen, one of the NEDs, asked for assurance that there was no substance to claims brought by SPMs which had featured in Private Eye (**POL00021503**). The minutes of the meeting record that Ms Crichton explained that:

> "…the subpostmasters were challenging the integrity of the Horizon system. However the system had been audited by RMG Internal Audit with the reports reviewed by Deloittes. The audit report was very positive. The Business has also won every criminal prosecution in which it has used evidence based on the Horizon system's integrity."[43]

73. Ms Crichton said that Mr Singh and Mr Wilson had told her that POL had won every prosecution and that it did not cross her mind to be suspicious: "if people are making that very absolute statement and they're lawyers and, again, this is with hindsight, you tend to think 'Well, actually, they've been in the business a long time, they must know what they're talking about'": **24 April 2024 7:12-8:15** (**INQ00001135**). Ms Vennells submits that a non-lawyer would be entitled to reach the same conclusion.

74. The information that Ms Crichton gave to the Board at its January 2012 meeting was set out in similar form in a letter from Ms Vennells to Mike Weir MP dated 1 December 2011 (**POL00001976**). The letter responded to parliamentary questions Mr Weir MP had put to the Secretary of State for BIS in November 2011 (**POL00295066**). These included details of how many prosecutions or investigations of SPMs instigated as a result of financial irregularities in the Horizon system had been abandoned. The email from Mr Granville to Mr Young dated 18 November 2011 (**POL00338494**) shows that the final draft of the letter was to be approved by "Group…Legal", i.e. RMG's legal department. The relevant part of Ms Vennells' letter (**POL00001976**) stated:

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> "There have been a limited number of cases where Court action has been taken over missing sums of public money. In some of these cases, the subpostmaster has made allegations against the Horizon system…The Courts have consistently upheld [POL's] position that the Horizon system is accurate and reliable….In some cases, the subpostmaster pleaded guilty; in others [POL] had to provide robust evidence. A criminal Court will only convict an individual if it considers that the evidence has shown, beyond reasonable doubt, that the individual is guilty of the offences…"

75. Although, the Board was not given a briefing on POL's prosecutorial role in the run up to separation, Ms Crichton gave evidence that she recalled speaking to Ms Vennells in early 2012 about "the fact we prosecuted and that the Board needed to be involved to understand that" but that she (Ms Crichton) had probably put this issue on the backburner while she awaited the outcome of the Second Sight Review, which started in 2012: **24 April 2024 4:24-5:10 (INQ00001135)**.

76. Ms Vennells also recalls speaking to Ms Crichton about prosecutions in early 2012. In paragraph 47 of her second witness statement, Ms Vennells confirmed, as she had stated in a letter to the BEIS Select Committee on 24 June 2020, that she discussed prosecutions with Ms Crichton shortly after she became CEO and was told that POL approached prosecutions with the same rigour as the CPS, applying the Police and Criminal Evidence Act 1984 and the Code for Crown Prosecutors. The documentary evidence that Ms Vennells has seen since she wrote to the Committee in June 2020 supports her recollection that she was given assurances that POL conducted prosecutions responsibly through a structured and professional legal process:

    a. Page 9 of (**POL00413669**) is a handwritten note by Ms Perkins. It was included in a pack of documents that Glenda Hansen sent to Ms Perkins on 19 March 2012 in relation to a dinner with Ms Vennells at the Zetter Hotel to discuss a meeting with Lord Arbuthnot on 28 March 2012. Ms Perkins was unable to say with any certainty whether the note recorded statements by Ms Vennells: **5 June 2024 60:13 -62:19 (INQ00001156)**. Regardless of whether Ms Vennells was the immediate source of the information in the note, the note indicates that Ms Perkins was told that POL conducted prosecutions responsibly and to a high standard of proof:

        > "1. We do not like prosecuting. sub postmasters We are one of v. few public bodies who are allowed to bring our own prosecutions. Not something we take lightly – our lawyers want a v. high standard of proof. [+ no-one [unclear] take

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> lightly the decision to plead guilty to a criminal charge.] We have taken a number of cases to the criminal court and we have never lost."

77. A speaking note prepared in May 2012 for Ms Vennells to use when speaking to Lord Arbuthnot (**POL00096628**) states that:

> "Suspect offenders would be interviewed under the auspices of PACE (Police and Criminal Evidence Act) and cases passed for advice to lawyers.
>
> The lawyers internal initially then external would apply the "prosecutor' guidelines" (in reality CPS checks and balances) to the matters in hand and advise prosecution, or not, accordingly dependent on the available evidence.
>
> Once it has been decided that there is sufficient evidence to launch a prosecution there is an additional test which considers whether such a prosecution is in the public interest. In the cases that we have public interest factors would include breach of trust and the nature of the offences. In addition it is thought that convictions will act as a deterrence and help protect public money."

a. The speaking note that Ms Vennells and Ms Perkins received for a meeting with Lord Arbuthnot on 3 July 2013, at the end of the Second Sight Review (**POL00115924**) stated: "For criminal prosecutions we treat each matter on a case by case basis, with a detailed investigation and legal review (generally involving external lawyers)."

78. While it is fair to say that Lord Arbuthnot remained concerned about POL prosecutions throughout the Second Sight Review, Ms Vennells was not given any indication by the POL legal team, which was aware of Lord Arbuthnot's concerns, that they had reason to believe or suspect that POL had prosecuted SPMs inappropriately. On the contrary: she was informed at both the beginning and at the end of the Second Sight review that POL brought prosecutions following detailed investigations of the facts and the law. In an email from Ms Crichton to Mr Edwards, cc Mr Flemington on 3 July 2013 (**POL00371762)**, Ms Crichton said "Nothing has emerged from the interim findings given to us by SS which would point to specific convictions being unsafe. Cases have been through the judicial process and the Court considers all relevant evidence not just that relating to the Horizon computer system." This is characteristic of the messaging that Ms Vennells had been and continued to receive from the GC, and which it is submitted she was entitled to rely upon.

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POL's use of expert evidence and its disclosure duties

79. The documents show that Cartwright King ("**CK**") advised POL about its disclosure duties and its use of Mr Jenkins as an expert witness piecemeal between 3 July 2013 and 17 July 2013:

a. Mr Clarke of CK recorded in his advice dated 15 July 2013 on "the use of expert evidence relating to the integrity of the Fujitsu Services Ltd Horizon System" (the "**Clarke Expert Evidence Advice**") (**POL00040000**) that CK was first contacted by POL in relation to bugs in Horizon on 27 June 2013. POL told CK: (a) that the SSIR would indicate that Horizon was not "bug free"; (b) it appeared that some within POL had been aware of bugs that affected up to 30 branches; and (c) Mr Singh had not known about the bugs and did not know how long POL had been aware of them or who within POL had been aware of them.

b. Mr Clarke also recorded in the Advice that, on 28 June 2013, he and Mr Smith of CK spoke to Mr Jenkins, who confirmed that he had told Second Sight about two bugs in Horizon. The transcript of the call (**POL00142322**) shows that Mr Jenkins confirmed his knowledge of two bugs in HNGX and stated that he was confident that the audit trail that POL would be using in the upcoming prosecution in the Samra case, in which Mr Clarke was instructed by POL, was not compromised by those bugs. Mr Clarke said in evidence that this conversation led him to review previous witness statements by Mr Jenkins, which contained no mention of his knowledge of the bugs: **9 May 2024 25:2-25:7** (**INQ00001144**).

c. On 3 July 2013, Mr Clarke gave advice to P9 MaOL in conference. There does not appear to be any note or minute of the conference in the disclosure to date. However, Mr Clarke's written advice dated 2 August 2013 (the "**Shredding Advice**") (**POL00006799**) states that the conference was "to consider issues relating to the Horizon computer system and the prosecution of criminal offences committed against POL by sub-Postmasters and clerks." Mr Clarke advised on at least the following issues at the conference:

i. The need for POL to set up a central depository of information about Horizon issues (including bugs and complaints), to provide a future expert witness,

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and those responsible for POL's criminal disclosure duties, with a single source of information: see paragraph 2 of the Shredding Advice.

ii. That POL would be obliged to carry out a case-by-case review of prosecutions to comply with its disclosure duties. This appears to have been preliminary advice pending CK's review of the, as yet unpublished, SSIR:

i. At 20:50 on 3 July 2013, Mr Williams emailed Mr Smith and Mr Clarke (cc. Mr Flemington and Mr Singh) stating "During our con, you explained prosecuting counsel's duty of disclosure (i.e. that we know of an issue which might be relevant to criminal proceedings)…(**POL00145145**).

ii. The following day, Mr Flemington emailed Mr Clarke and Mr Smith (cc. Ms Crichton, Rodric Williams and others) a "first rough draft from SS of one half of the Interim Report" (**POL00145201**) and asked for CK's "material & significant concerns on this first thing tomorrow morning."

iii. Mr Smith replied to all on 5 July 2013 at 9:59 that "our advice overall in relation to disclosure has not changed" (**POL00145201**) but that disclosure of a partial report would not comply with POL's duties and CK were unable to advise properly until they had seen all of the relevant material. However, Mr Smith identified paragraphs of the draft SSIR that CK was concerned about.

iv. On the same day, Mr Williams replied to the POL individuals in the chain to summarise his understanding of CK's advice (**POL00145201**). 1. "No change in advice, i.e. need to do case-by-case review. 2. CK have flagged the same para's we've identified as troublesome re; our disclosure to SS and SS's conclusions 3. CK haven't articulated what their concerns are 4. No comment on how the Interim Report could be used by [disgruntled] SPMs (I've already gone back to them on this)".

d. Mr Clarke gave oral evidence that he raised concerns about Mr Jenkins' reliability as an expert witness at the conference on 3 July 2013 (**9 May 2024 46:11-46:25** (**INQ00001144**)), however there is no documentary evidence of what he said. The

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documents, and Mr Clarke's evidence, suggest that the advice at this stage was that POL could no longer use Mr Jenkins as an expert witness due to concerns about his failure to disclose his knowledge of the bugs.

e. By the morning of 8 July 2013, POL was clearly aware that it needed a new Horizon expert, and this advice can only have come from Mr Clarke. At 10:18 on 8 July 2013, Mr Flemington emailed Mr Clarke (cc. Ms Crichton, Mr Williams, Mr Scott and Mr Singh) an "Action List" (**POL00323832**) including requests for CK to provide:

   i. Immediate, same day, written advice on "what we say to FJ to get a new expert different to GJ"; and

   ii. A later piece of advice on "the impact of the SS Indep Review and the Bugs/GJ WS issues".

f. On the same day, Mr Clarke sent POL a note entitled "General Advice" (**POL00006365**):

   i. Mr Clarke suggested that Fujitsu should be told in relation to Mr Jenkins that: "Counsel has advised POL that there ought now to be at least one degree of separation between any expert witness called in support of a POL prosecution and the SS process."

   ii. He advised that POL should inform RMG that the SSIR fell squarely within POL's obligation to give disclosure of information which might be considered capable of undermining prosecutions and that POL had instructed CK to conduct a review of POL prosecutions to ensure compliance with this duty. The SSIR would be disclosed to defendants where this was required under CPIA 1996.

g. The reason why Mr Flemington requested urgent advice on what POL should tell Fujitsu about Mr Jenkins is shown by Mr Flemington's email at 12:52 on 8 July

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2013 to Ms Sewell (cc. Ms Crichton, Mr Williams, and Mr Singh), asking for her help in finding a new Fujitsu Horizon expert for imminent criminal hearings.[44]

h. Mr Clarke explained in his oral evidence that, while he had formed the view by 8 July 2013 that Mr Jenkins could not and should not be used as witness in the future, he had not yet formed the more trenchant views about Mr Jenkins that he expressed in the Clarke Expert Evidence Advice: **9 May 2024 180:21-181:23** (**INQ00001144**).

i. On 10 July 2013, Ms Crichton and Mr Flemington met Simon Richardson of Bond Dickinson. Mr Richardson's file note of the meeting (**POL00407582**) records that "The real worry was around the Fujitsu expert who appeared to have known of some of the problems but not referred to them in his report or statement even though they could be dismissed. There are non-disclosure issues here. They are looking at replacing that expert with somebody else."

j. On 11 July 2013, in response to an email from Mr Williams, Martin Smith advised Ms Crichton, Mr Singh, Mr Williams and Mr Flemington that the Helen Rose Report was disclosable in criminal proceedings, including in past prosecutions on two grounds: (a) it showed that the data used by POL did not distinguish between reversals initiated by the SPM and reversals initiated by the system; and (b) comments in the report by Ms Rose indicated that Mr Jenkins was aware of issues relating to the integrity of Horizon (**POL00066789**).

k. On 12 July 2013 at 11:44, Mr Smith of CK emailed Mr Williams (cc. Ms Crichton, Mr Flemington, Mr Singh and Mr Clarke) attaching "Simon's Bullet Points re GJ for use in discussions with FJ." (**POL00191966**). The attachment is (**POL00191967)**, which stated:

    i. "A full report which considers Fujitsu and Gareth Jenkins' provision of expert evidence is being prepared;

[44] The first line of Mr Flemington's email was a near verbatim quote from Mr Clarke's General Advice: "Our criminal lawyers have advised us that there now ought to be at least one degree of separation between any expert witness called in support of a POL prosecution and the Second Sight process." (**POL00191461**)

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ii. The initial view seems to be that statements and evidence provided by Gareth Jenkins did not contain all that they should have done;

iii. In particular there seems to have been a reluctance to deal with known Horizon issues in the statements/evidence; and

iv. As a consequence it has been necessary to conduct a review of cases so as to determine whether or not any particular defendant has been prejudiced by the absence of information."

l. Mr Clarke explained that the provisional and tentative nature of these bullet points reflected the fact that he had not yet completed his review of Mr Jenkins' expert evidence and that he was not yet prepared to progress in his advice from expressing concerns to stating that Mr Jenkins had misled the court: **9 May 2024 72:5-73:16** (**INQ00001144**).

m. At 17:13 on 12 July 2013, Mr Williams forwarded (**POL00191967)** to Mr Parsons of Bond Dickinson (cc. Ms Crichton, Mr Flemington and others), stating that "a more detailed note should arrive on Monday". This is almost certainly a reference to the Clarke Expert Evidence Advice. Mr Williams asked Mr Parsons to draft an email to put Fujitsu on notice of the issue with Mr Jenkins.

n. An email from Mr Williams to Ms Crichton and Mr Flemington on 13 July 2013 (**POL00297710**) contained an "overview of where we are on the Horizon/Second Sight matter, and who is doing what." These included:

> "Current and historic criminal case review – Cartwright King
>
> - Review is now considering pre-Separation cases
>
> - CK notifying POL of cases where further disclosure is required (e.g. of the SS Interim Report) as they are identified
>
> - Next conference call on progress is set for Wednesday 17.07.13 — CK has been asked to arrange
>
> Fujitsu – Bond Dickinson / [CK]

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- CK has raised issue concerning Horizon evidence presented by Fujitsu during criminal trials

- Simon Clarke, CK to provide Note of Advice re: same on 15.07.13

- Andy Parsons, BD structuring POL's approach to Fujitsu

New Horizon Expert":

Hugh emailed new Fujitsu contact – Torstein Godeseth – to CK on 10.07.13

CKto arrange to meet TG

Andy Parsons, BD progressing new independent expert."

o. The Clarke Expert Evidence Advice (**POL00040000**) is dated 15 July 2013. Mr Clarke advised that:

i. There were convicted and current defendants to whom POL was obliged to disclose (i) the two bugs in HNGX; and (ii) the Helen Rose Report under its disclosure duty as prosecutor. POL would need to carry out a review to ensure that these disclosure failings were rectified.

ii. Mr Jenkins' failure to disclose the bugs in his expert evidence was a breach by him of his duty as an expert witness and a breach by POL of its duty as a prosecutor.

p. CK sent the Clarke Expert Evidence Advice to POL on 17 July 2013. It was first emailed by Martin Smith to Ms Crichton (cc. Mr Flemington) at 08:23 with the message "Please find attached Simon Clarke's advice concerning Gareth Jenkins." (**POL00039999, POL00192249**). At 10:40, Ms Crichton forwarded the advice to Mr Williams and Andrew Parsons (cc. Mr Flemington) with the message "I haven't read this yet." (**POL00039999**) (**POL00192249**); (**WBON0000770**). At 11:14, Mr Williams forwarded the advice to Mr Parsons (cc. Hugh Flemington) with the message: "Andy – this is the advice note from Cartwright King which can be used to form an approach to Fujitsu about this specific issue and Horizon generally (see

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one of my emails to you on Friday night)". (**POL00039999**); (**POL00192249**) (**WBON0000770**).

80. This chronology shows that the advice about disclosure and Mr Jenkins was given piecemeal against the background of a rapidly moving situation. Ms Vennells submits that:

a. It is likely that Mr Clarke is correct that he did not advise POL about Mr Jenkins' and POL's breaches of duty until he produced the Clarke Expert Evidence Advice on 15 July 2013. There is no documentary evidence that he did so and, indeed, the documents, as a whole, suggest that he did not:

i. Although Mr Clarke is likely to have raised Mr Jenkins at the conference on 3 July 2013, the documents which have a bearing on what was said at the conference suggest the conference focussed on POL's disclosure duties. Mr Clarke stated in his witness statement that he was concerned at the time that POL did not understand its duties in relation to disclosure, including the need to retain and disseminate information known within the business to the legal team: WS ¶43-44 (**WITN08130100**).

ii. The advice requested by Mr Flemington on 8 July 2013 concerning what POL should tell Fujitsu about Mr Jenkins, was to assist POL in obtaining a new, but short-term, Horizon expert from Fujitsu for imminent court hearings.

iii. The documents strongly suggest that the purpose of the second piece of written advice requested by Flemington, to address "the impact of the SS Indep Review and the Bugs/GJ WS issues", was to equip POL with information to notify Fujitsu of the situation with Mr Jenkins.

iv. CK sent Mr Flemington Mr Clarke's bullet point thoughts on Mr Jenkins on 12 July 2013 as a preview of Mr Clarke's formal advice, i.e. the Clarke Expert Evidence Advice, which was not yet complete. As can be seen, the bullet points are less stark than the final written advice and do not contain the conclusion that Mr Jenkins and POL had breached their duties (**POL00191967**). The document is consistent with Mr Clarke's evidence that

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he did not reach those conclusions until shortly before he completed the Clarke Expert Evidence Advice.

b. The circulation of the Clarke Expert Evidence Advice was limited to Ms Crichton, Mr Williams, Mr Flemington and Mr Parsons of Bond Dickinson. Ms Crichton accepted that the document was not sent to the Board.

c. Ms Crichton said that she cannot remember reading the Clarke Expert Evidence Advice at the time, but that the contents of the advice "had previously formed part of the face to face discussion I had with CK when we agreed on their disclosure proposal."[45]

d. Ms Crichton appeared to state here that the Clarke Expert Evidence Advice was a written record of the advice given in conference on 3 July 2013. This must be inaccurate. The conference on 3 July 2013 focussed on POL's disclosure duties, including its obligation to retain potentially disclosable material. There is no evidence that Mr Clarke advised on the Helen Rose Report until 11 July 2013. The evidence suggests that Mr Clarke did not advise POL that Mr Jenkins and POL had breached their duties until 17 July 2013, when CK sent the Clarke Expert Evidence Advice to POL.

e. It is plausible that Ms Crichton did not pay much attention to the Clarke Expert Evidence Advice when it was received. She does not recall reading it and, on her own evidence, she was more concerned at this time with the progress of the prosecution case review. It is possible that Ms Crichton assumed that the written advice added nothing to what she had already been told, particularly since Mr Flemington sought the Clarke Expert Evidence Advice, not to obtain further legal guidance on POL's disclosure duties and the case review, but to set a position that could be communicated to Fujitsu.

f. The best evidence of Ms Crichton's state of knowledge about Mr Jenkins in July 2013 is the passage in Mr Richardson's file note of a meeting with Ms Crichton on 10 July 2013 which records: "The real worry was around the Fujitsu expert who appeared to have known of some of the problems but not referred to them in his

[45] This appears to be a reference to the conference on 3 July 2013.

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report or statement even though they could be dismissed. There are non-disclosure issues here." (**POL00407582**)

g. What this appears to be suggesting is that, although Mr Jenkins failed to disclose problems in his reports and statements, "they could be dismissed", i.e. the problems he failed to mention were not relevant to the cases in which he was instructed. This is most likely to have meant, in the context of non-disclosure in POL prosecutions for theft and false accounting, that the problems did not cause the shortfalls that Mr Jenkins had addressed in his reports.

81. Before POL received the Clarke Expert Evidence Advice on 17 July 2013, Ms Crichton prepared a document for the Board, dated 12 July 2013, entitled "Update following the publication of the Interim Report on Horizon" (the Board Paper) (**POL00006546**), which the Board discussed at its meeting on 16 July 2013. This was the first document prepared for the Board which contained any explanation from Ms Crichton, or anyone else in POL legal, about the review of past prosecutions. The document stated that:

a. POL was reviewing ongoing and new prosecutions to determine whether they should be adjourned, or other action taken in light of the SSIR (paragraph 3.6).

b. On the advice of external criminal lawyers, POL had immediately begun a review of criminal cases conducted since separation on 1 April 2012 and that more details about the review were set out in Annex 1 to the document (paragraph 3.7).

Ms Crichton did not attend the Board meeting on 16 July 2013 to present her update paper. The decision to exclude Ms Crichton from the meeting was made by Ms Perkins: **5 June 2024 135:6-138:14** (**INQ00001156**). Ms Vennells has stated in her evidence that she was not given any notice of this decision and that "I explained to Alice that Susan would find it hard to take, as she had prepared her update for the POL Board; plus, there would undoubtedly be questions from the POL Board, which I may not be able to answer": ¶1035 PV WS1 (**WITN01020100**) Ms Perkins did not give any evidence to suggest that Ms Vennells' recollection is wrong.

82. Paragraph 1 of Annex 1 of the Board Paper stated that:

> "Post Office have been advised by our external criminal lawyers to undertake a review of all cases going back to the time of the migration from Old Horizon to

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> Horizon Online (aka HNGX) - 1st January 2010 - and this has already begun. They are essentially looking at whether or not anything in the SS interim report should be drawn to the attention of any defendants (current or past) and if so they will be writing to the relevant defendants providing them with a copy of the interim report. We have a continuing legal duty as the prosecutors to do this."

83. The remainder of Annex 1 stated that:

    a. It was believed that POL had undertaken about 55 prosecutions a year for the last 10 years, although there was difficulty in obtaining historic files from RMG. The external lawyers had advised that POL would need to disclose the additional evidence in 5% of cases and then it would be up to the defence lawyers to consider the evidence and apply to the Court of Appeal.

    b. Each individual would need to seek leave to appeal from the Court of Appeal if they wanted to overturn their conviction. The Court of Appeal would look at each case on its merits and consider the evidence that the person was convicted on. For example, there might be Horizon evidence but also other paper trail evidence or even admissions of guilt. It was by no means clear that each appeal would be successful.

    c. POL might also face civil suits for wrongful convictions.

84. A number of points can be made about this document. First, Ms Crichton stated in her oral evidence (though not in her witness statement) that she told Ms Vennells about the risks set out in an earlier version of the document (**POL00191681**).

    a. These included, at paragraph 3.4.1 of (**POL00191681**), that "Our external lawyers have advised us that they believe there will be around 5-10% of these [appeals] which may be successfully overturned and the convictions quashed": **23 April 2024 104:5-105:3** (**INQ00001134**).

    b. This earlier version of the document was emailed to Ms Crichton on 10 July 2013 by Mr Flemington with the message "This is where I got to" (**POL00191680**). Ms Crichton was vague as to when she may have told Ms Vennells about the risks outlined in (**POL00191681**). She stated that it "would have been" around 12 July 2013 but that it "might have been a bit later than that": **23 April 2024 104:19-105:3** (**INQ00001134**).

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This evidence makes little sense in light of Ms Crichton's subsequent evidence on the same day of her oral evidence that she amended the draft document to remove the reference to 5-10% of the potential appeals being successful as a result of discussions with CK, who gave her "revised information". She said that, in making the changes, she was "just stating the facts, I suppose" and that she was "guided by [CK] who were undertaking the review": **23 April 2024 109:2-110:20** (**INQ00001134**). Ms Crichton had made this change by 12 July 2013: see the version of the document at (**POL00145426**). In other words, the amended version of the document (i.e. the version that went to the Board) accurately reflected the advice Ms Crichton had obtained from CK. It is highly unlikely that Ms Crichton briefed Ms Vennells about the earlier version on or around 12 July 2013 or afterwards, because by this point, Ms Crichton understood that the advice from CK was not that 5-10% of appeals were likely to succeed.

85. Second, at paragraph 4.6 of the annex to the update to the Board, Ms Crichton recommended that POL should take a "reactive approach" to criminal appeals: "[POL should wait for those to be overturned by the Court of Appeal and for claims for compensation to be made. We then decide whether to settle or fight these cases on a case by case basis." Ms Crichton believed that CK had advised POL to take this approach (**23 April 2024 105:18-105:20** (**INQ00001134**)) and explained the rationale in her oral evidence: "I thought it was very important to start that disclosure process and, as we see through the other documents, we then ask for that disclosure to be validated and further advice came from Mr Altman and, frankly, I think that, after Post Office got through that stage, then there should have been a step back to say And what next?'": **23 April 2024 105:9-105:17** (**INQ00001134**). Ms Vennells submits that it was a matter for the lawyers to advise what additional steps POL should take in light of the outcome of the disclosure exercise and Mr Altman KC's advice.

86. Third, the paper did not ask the Board to make any decisions about the review of past cases. It summarised the advice from external specialist lawyers as to the appropriate course of action, i.e. to conduct a review of past cases, which was already being implemented.

87. Fourth, the document does not mention Mr Jenkins, either by name or by reference to his role as an expert witness. It also does not state that CK's main areas of concern in relation

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to disclosure were the two bugs in HNGX and the Helen Rose Report. Ms Crichton explained the omission of any mention of Mr Jenkins in her written and oral evidence:

a. Ms Crichton stated in her witness statement that her update to the Board for its July 2013 meeting "would have focussed on the disclosure exercise that was by then underway, rather than the possibility of finding a new expert witness. From my perspective, this was because establishing POL's disclosure requirements and complying with these requirements was more of a pressing, long-term issue at this time. I felt that finding another expert witness could wait until the disclosure issue had been resolved, and could then form part of Mr [Altman] KC's Board presentation once he had completed his review in October 2013." (WS ¶260) (**WITN00220100**).

b. Ms Crichton gave similar oral evidence when she was asked whether Mr Clarke's evidence about Mr Jenkins was one of the matters in her knowledge that should have been raised at Board level:

> "I think the outcome of those were raised, in the sense of we then had to review the prosecutions, look for new expert evidence, but I'm not sure, I can't fully remember and, again, it would have been something I might have discussed rather than written down, about the fact that Gareth Williams (sic) was an expert we could no longer use, and to explain why that was so important to the Board." **24 April 2024 9:7-9:15** (**INQ00001135**).

88. In these parts of her evidence, Ms Crichton framed the issue with Mr Jenkins as being that POL could no longer use him as an expert and needed to find a replacement. Although not contemporaneous, this evidence supports the possibility that Ms Crichton may not have been familiar with the contents of the Clarke Expert Evidence Advice at the time. It also shows that Ms Crichton's focus in her communications with the Board focussed on what POL needed to do operationally, rather than why it needed to do it.

89. In her oral evidence, Ms Crichton stated that, while she could not remember doing so, it was likely that she told Ms Vennells that there had been an expert whose evidence was unreliable and which was used in criminal prosecutions: **24 April 2024 10:7-10:13** (**INQ00001135**). Ms Vennells agrees that she became aware of an issue with an expert witness, but there are issues as to the content and the timing of Ms Vennells' understanding.

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90. Ms Vennells believes that she became aware of an issue with expert evidence from a conversation with Ms Sewell. Ms Sewell said that POL's expert witness from Fujitsu had been stood down because he had not revealed bugs during the prosecution of Ms Misra. Ms Sewell was unhappy about this, because she said the bugs were irrelevant to the case: **23 May 2024 75:14- 76:23 (INQ00001152);** PV WS1 ¶563 (**WITN01020100**). This was followed by a discussion with Ms Crichton, who explained that there was a duty of disclosure, and that POL would need to review cases in which the expert had given evidence: **22 May 2024: 41:2-17 (INQ00001151**). Ms Vennells cannot recall precisely when these conversations occurred.[46] She was not however told about the contents of the Clarke Expert Evidence Advice, or that there had been a breach of duty by the expert or by POL as prosecutor.

91. Mr Jenkins was mentioned at a meeting on 22 July 2013 attended by, among others, Ms Vennells, Ms Crichton and Second Sight, to discuss the completion of the investigation of the cases within the Second Sight Review (**SSL0000108**). Mr Warmington stated that Second Sight had been assisted during their review to date by "incredibly high quality material put together by [Mr Jenkins], who obviously knows the system like the back of his hand, and do I get the sense that he's coming up to retirement? That could be quite a problem for us if he's about to leave." Ms Crichton responded "To be honest, Ron…. Let's take that offline I think." Mr Warmington's comment about Mr Jenkins was picked up later in the conversation by Ms Vennells:

> "… I think 2 things: one is we need to go back to FJ with some specifics around turnaround times….. Secondly, this guy Gareth, whether he's replaced or in fact whether we might want to use him in the same way if he does leave Fujitsu, is in the process, if he's a good quality individual…"

92. On 22 July 2013 at 18:57, Ms Lyons sent a note of the meeting to Ms Crichton. At 21:36, Ms Crichton replied with her comments in capital letters (**POL00192725**). Ms Lyons recorded a comment from Second Sight that "It was thought that Gareth Jenkins produced high quality (sic.) and he may be able to help the process", i.e. the continuing investigation of the cases. Ms Crichton did not comment on this statement, despite her

[46] Ms Vennells stated in her oral evidence on 24 May 2022 that she believed that the conversations occurred at least a month before 27 September 2022: **24 May 2024 34:25-35:10 (INQ00001153**).

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knowledge by 22 July 2013 that there were doubts about the reliability of Mr Jenkins' evidence in relation to Horizon.

93. Ms Vennells submits that the discussion at the meeting and the email exchange between Ms Lyons and Ms Crichton strongly suggest that, as of 22 July 2013, she had been told nothing at all about any concerns with Mr Jenkins.

94. The first indication in the documents that Ms Vennells was aware of any issue with expert evidence is contained in an email exchange between Ms Vennells and Ms Crichton between 23 and 28 August 2013 (**POL00108065**). The email in the chain from Ms Crichton to Ms Vennells on 27 August 2013 contains the text of Ms Crichton's initial email to Ms Vennells, Ms Vennells' queries on the email, and Ms Crichton's replies. It includes the following exchange on the issue of expert evidence:

> " [SC] We are urgently working with our external firms to identify an independent expert to provide evidence on the Horizon system. [PV] PREVIOUSLY THIS WAS PROVIDED BY FUJITSU? WHY MOVE FROM THIS? DO WE HAVE TO VALIDATE FUJITSU? [SC] We are concerned that this needs to be independent rather than FJ verifying its own system. Happy to explain rationale further at our steering board meeting this week."

95. The exchange suggests that Ms Vennells had not been fully informed about the legal issues around expert evidence and Mr Jenkins in late August 2013.[47] The first document created for the use of the Sparrow Steering Group which mentioned that POL was seeking a new independent expert was a presentation prepared for the Steering Group meeting on 29 August 2013. It did not explain why POL needed a new expert (**POL00139111**). The first document sent to the Board which referred to the instruction of an independent expert was the Significant Litigation Report for the September 2013 meeting (**POL00027528**), which reported that POL was not issuing any new criminal cases pending the instruction of a new independent expert who could give evidence to support the Horizon system. Again, however, it did not explain the rationale for the instruction of a new expert. The documents suggest that Ms Crichton was following the sequencing of the provision of information she described in her oral evidence, namely, that the

[47] See Ms Vennells' oral evidence about this document on **24 May 2024 36:18-38:8** (**INQ00001153**).

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instruction of a new expert was less important than ensuring progress in the prosecution case review.

96. On 21 October 2013, Ms Vennells sent an email to Ms Perkins to update her on various matters before she left on holiday (**POL00382001**). These included:

> "My concern re Sparrow currently is our obligations of disclosure re., an unsafe witness. (The representative from Fujitsu made statements about no bugs, which later could be seen to have been undermined by the SS Report.) We do not think it material but it could be high profile. Martin E is briefed if you want more detail. This is just in case."

97. Since the document was disclosed after Ms Vennells gave evidence, she had no opportunity to give evidence about it. Ms Vennells makes the following submissions:

a. There is a similarity between Ms Vennells' description of the issue to Ms Perkins and the reference in Mr Richardson's file note of his meeting with Ms Crichton and Mr Flemington on 10 July 2013 to a "Fujitsu expert who appeared to have known of some of the problems but not referred to them in his report or statement even though they could be dismissed." (**POL00407582**):

i. In both descriptions, the expert's omission to mention problems or bugs is followed by a qualification. In Mr Richardson's file note, the qualification is that "they", meaning the problems the expert failed to disclose, "could be dismissed". In Ms Vennells' email, the qualification is that "we do not think it material". "It" in that sentence clearly means the statements by the expert that were undermined by the SSIR. The statements in the file note and in Ms Vennells' email appear to mean much the same thing, namely, that the failings of the expert did not or do not have a significant impact on the safety of prosecutions.

ii. The statement in Mr Richardson's file note is also echoed in Ms Vennells' recollection that Ms Sewell stated that the expert had been stood down even though the bugs he failed to disclose were irrelevant in the case.

iii. Ms Vennells could not have taken the information in her email to Ms Perkins from any document disclosed by the Inquiry. There are no documents sent to Ms Vennells before 21 October 2013 which refer to an unsafe witness. The

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content of the email can only have come from POL legal, and it positions the expert evidence issue in a way which downplays its seriousness.

b. Ms Vennells' description of the unsafe witness as a "current" concern suggests that this concern was a relatively recent development in October 2013.

c. Ms Vennells shared what she knew with Ms Perkins and directed her to Mr Edwards if she required any more information. There is no evidence that Ms Perkins followed up on Ms Vennells' email.

98. Ms Vennells submits that this evidence suggests that the advice about Mr Jenkins and its relationship to disclosure was given to Ms Vennells in an unstructured and piecemeal manner. Even then, what Ms Vennells was told did not properly capture the gravity of the Clarke Expert Evidence Advice and, indeed, downplayed its gravity. However, Ms Vennells was told, and told repeatedly, that POL was taking the necessary and appropriate steps by conducting a review of past prosecution cases, that this task was in the hands of specialist external criminal lawyers, and that their work was being reviewed by a senior and experienced criminal barrister, Mr Altman KC. As a non-lawyer, and based on what she knew, Ms Vennells was entitled to accept that POL was acting appropriately on specialist legal advice.

99. Ms Crichton accepted in her evidence that it was her responsibility to put in place a process which ensured that the Clarke Expert Evidence Advice be brought to the attention of the Board, and that she had not discharged this responsibility: **24 April 2024 13:13-14:5 (INQ00001135)**.

100. Mr Aujard also failed to bring the Clarke Expert Evidence Advice to the attention of the Board: **24 April 2024 99:19-99:23 (INQ00001135).** He accepted that he received a copy of the Clarke Expert Evidence Advice as an annex to a CK briefing note on the legal issues raised in relation to POL prosecutions when he started as Interim GC in October 2013 (**POL00108136): 24 April 2024: 74:15-74:19; 78:9-78:21 (INQ00001135).** He claimed not to recall whether he read it in detail: he suggested that his view at the time was that it was a "historic detail" that was being dealt with through the case review process: **24 April 2024: 79:21-80:2 (INQ00001135).** He stated that he did not know whether the Board had been told that Mr Jenkins had breached his duties as an expert and

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assumed that he would have been informed if the Board had not been told: **24 April 2024 91:8-91:24** (**INQ00001135**).

101. Ms Crichton has not said, in her written or oral evidence, that she told Ms Vennells about the Helen Rose Report and its significance to POL's disclosure duties. Ms Vennells submits that it is highly unlikely that she was told anything in this regard:

a. There is no documentary or witness evidence that she was told, and Ms Vennells cannot recall being briefed about the Helen Rose Report and the issues arising from it: PV WS1 ¶¶379; 708-714 (**WITN01020100**).

b. Mr Aujard stated that he did not tell the Board about the Helen Rose Report: **24 April 2024 99:19-99:23** (**INQ00001135**).

c. (**POL00108163**) is an email chain dating from 23-24 October 2013 in which Mr Williams and Mr Edwards decided not to mention the Helen Rose Report in Ms Vennells' CEO report for the October 2013 Board meeting, which they were engaged in drafting. Mr Edwards stated in his oral evidence that he did this because "I was quite concerned about putting in information into a report going out in Paula's name when she wasn't familiar with this issue. It felt inappropriate to put something in a report in her name before she'd been properly briefed": **26 July 2024: 152:6-152:10** (**INQ00001182**). Although Mr Edwards stated that he intended that a briefing session for Ms Vennells would be arranged before the October 2013 Board meeting, he was not present at any briefing, as he was about to go on leave: **26 July 2024: 152:11-152:22** (**INQ00001182**). There is no evidence that Ms Vennells was briefed about the Helen Rose report before the October 2013 Board meeting.

Conduct of the prosecution case review

102. The Board was provided with additional information about the review of criminal cases in a paper dated 26 July 2013 (**POL00006590**) entitled "Update on the work programme arising from the Horizon report". The "Prosecution Case Review" was addressed in section (ii), which provided the following information, although again, it omitted any mention of Mr Jenkins or expert evidence:

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a. POL had a continuing duty to act properly and fairly in prosecutions, which required POL to disclose to the defence any information that undermined the prosecution. This assessment was made on a case-by-case basis. POL was complying with this duty by engaging CK to review past and present prosecutions to identify any cases where the SSIR should be disclosed. It was then up to the defendant to decide whether to seek permission to appeal their conviction from the Court of Appeal.

b. As of 22 July 2013, CK had reviewed 124 cases, with the following outcomes:

> • "the prosecution has been discontinued in three cases as not being in the public interest;
>
> • disclosure to the defence has been provided in 6 cases;
>
> • in all cases, the recommendation is that we oppose any attempt to appeal; and
>
> •"it is not believed that any of the cases would satisfy the test for compensation from the Government for a miscarriage of justice under the Criminal Justice Act."

c. The next stage of the Sift Review was to "review pre-separation case files held by Royal Mail, initially dating back to the start of 2010".

d. POL was "consulting Brian Altman KC, a leading barrister ... to provide additional advice and independent oversight on this case review process and any wider criminal law questions that arise (for example questions from the [CCRC] about how we are handling this matter)". The scope of Mr Altman KC's work would also include recommendations about POL's future prosecutions strategy, to inform POL's thinking.

103. This paper was not written by Ms Crichton. It was suggested to her in her oral evidence that the author may have been Ms Vennells: **23 April 2024 128:7-128:18** (**INQ00001134**). This is incorrect. Mr Edwards said in his evidence that he prepared the paper with input from SMEs (meaning subject matter experts) on the content relating to the CK review of past prosecutions. Mr Edwards shared a draft of the paper with Ms Crichton and Ms Vennells on the morning of 26 July 2013, stating that he would be grateful for any comments: see (**POL00192884**). The content of the note in relation to

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prosecutions (regardless of who drafted it) could only have come from the POL legal department.

104. During August and September 2013, Ms Crichton provided further updates on the progress of the review of past prosecutions and the role of Mr Altman KC.

a. On 2 August 2013, Mr Altman KC produced his "Interim Review" of CK's process for reviewing criminal cases for disclosure (**POL00006801**). Ms Vennells and the Board were not shown the "Interim Review". However, on 9 August 2013, **(POL00381490)** Ms Crichton reported to Ms Vennells (cc. Mr Day and Mr Baker):

> "Criminal process is on going with three cases being discontinued following review as no longer being in the public interest, there are approximately 50 files which still need to be reviewed with 37 to come from RMG. As yet we have not received any notice of appeal or any queries from the defence lawyers.
>
> Brian Altman QC has been asked to review the process being undertaken but [sic] Cartright King (our external criminal lawyers) and found that the current process CK have adopted is broadly fine. He raises some issues and we have given the report to CK and they are preparing a written response with a view to a face to face meeting in late August when Brian Altman is back from holiday.
>
> Terms of reference for the review by Brian Altman has been drafted and needs to be agreed by end of August when he is back from holiday…"

b. In an email on 30 August 2013 (**POL00108087**) Ms Crichton informed Ms Vennells that:

> Meeting was held with our external law firm who have been completing the criminal case review on Friday
>
> The issues that we want Brian Altman QC to advice [sic] on were agreed, final sign off of review process; and advice on prosecutions going forward.
>
> Conference agreed for 9th September where the focus will be on our prosecutorial obligations of disclosure of any information which may be of assistance to the defence. After this conference we will finalise the terms of reference for Brian Altman's review; this will include, amongst other things a consideration of POL's position re criminal prosecutions."

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c. Ms Crichton gave Ms Vennells an update on the conference with Mr Altman KC on 9 September 2013 in an email dated 13 September 2013 (**POL00027667**): "…overall his opinion in conference was that the work that had already been completed was fine and along the right lines taking into account [POL's] prosecutorial duties to disclose evidence/information to the defence; he confirmed that this duty was ongoing and continued after conviction. We have agreed the TOR for his review which should be completed in October and will include advice on whether Post Office should bring prosecutions."

d. On 18 September 2013 Ms Crichton prepared an update for the Board on what was now known as Project Sparrow (**POL00027134**):

i. CK had completed three sift reviews, discontinued four prosecutions, and given disclosure of the SSIR in nine cases.

ii. A meeting had been held with Mr Altman KC on 9 September 2013. Mr Altman KC had received CK's protocol for the Sift Review and looked at a sample of the cases within the Review which had been completed by CK. "He agreed with the approach taken by our external lawyers and confirmed that the protocol was well thought through being correctly applied in the cases he reviewed. After discussion he also understood the logic of 1st January 2010 being the start date for the review on the basis that this was implementation date for [HNGX] and that branches had been audited on transition."

iii. Mr Altman KC would be engaged going forward to advise POL and its external solicitors on POL's continuing disclosure obligations.

iv. The terms of reference for his review would be agreed and include an opinion on POL's "position as a public prosecutor and its prosecutions policy."

105. Mr Altman KC produced his "General Review" of the prosecution case review on 15 October 2013 (**POL00006581**). Again, this was not shown to Ms Vennells, nor to the Board. Ms Vennells' CEO report for the October 2013 Board meeting (which was prepared for her by Mr Edwards and Mr Williams) stated that:

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> "Our external firm of criminal solicitors, Cartwright King (CK), has now completed a review of 301 cases subject to past prosecution to identify whether we have a duty to disclose the findings of the Second Sight report and associated issues. CK has concluded that disclosure is appropriate in 10 of these cases, and a short letter has therefore been sent to each of the defence teams to bring their attention to the report.…In view of the potential interest from the Criminal Cases Review Commission, we have also asked our criminal barrister, Brian Altman QC, to conduct an independent review of the overall process we have taken to review past cases, reaching the conclusion that our approach is 'fundamentally sound'".

106. Similarly, a paper on prosecutions policy prepared by Mr Aujard for the ARC on 8 November 2013 stated that the headline conclusions of Mr Altman KC's "backward looking report" (i.e. his "General Review") were that the review of past prosecutions was "fundamentally sound" and that no "systemic or fundamental flaws in the review process" had been detected. Mr Altman KC had also made a number of relatively small procedural recommendations, such as in relation to document retention (**POL00027501**).

107. Ms Vennells submits that:

    a. She received information about the case review but was not consulted about, and had no involvement in, directing the structure of the review, deciding which lawyers to engage, or decisions about what documents should be disclosed and to whom. The review was an operational legal project, which could only be carried out by specialist lawyers subject to the oversight of the GCs. This was also the rationale for entrusting to the GC the responsibility to manage POL's responses to the CCRC: PV WS ¶1557 (**WITN01020100**).

    b. The documents summarised above, individually and cumulatively, would have given any reasonable person in Ms Vennells' position reassurance that the review process was being carried out competently and in a professional manner by specialist criminal solicitors and that their approach had been endorsed by Mr Altman KC. This was also Ms Perkins' position at the time. She stated in her written evidence that, as a non-executive director without operational control, "one of the things you are keen to determine is that that critical issues are being appropriately resourced and that the right external advisors and experts are being engaged to ensure that the company is receiving the best advice. I think that at this point in July 2013, I would have felt confident that this was happening with regard

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to the legal review." (WS ¶263) (**WITN00740100**). Ms Perkins derived confidence from the subsequent reports received about the advice from CK and Mr Altman KC (WS¶303.3) (**WITN00740100**).

c. Ms Perkins made the point in her evidence that the summaries of the external legal advice presented to the Board were inadequate. They failed to alert the Board to, among other matters: (a) the conclusions of the Clarke Expert Evidence Advice; (b) the existence and the significance of the Helen Rose report; (c) Mr Altman KC's view in his October 2013 General Advice that Mr Jenkins was tainted and that his future role as a witness was untenable; (d) the statement in Mr Altman KC's General Advice that he was left unclear about whether POL had challenged Mr Jenkins about his non-disclosures; (e) Mr Altman KC's criticisms of the disorder of POL's prosecution policies and past prosecutions; and (f) the possibility that CK were conflicted due to their role in past prosecutions, including those in which Mr Jenkins had given evidence.

d. However, at the time, none of the Board members asked to see copies of the external advice or to meet CK or Mr Altman KC. There was an assumption on the part of the Board that the GCs were complying with their core responsibilities to alert the Board to legal risks, and to provide accurate and complete summaries of external legal advice. That is the only way to understand Ms Perkins' evidence that the omissions from the summaries were "shocking" and "extraordinary": WS ¶¶82; 276 (**WITN00740100**).

e. It is Mr Aujard's evidence that he made no attempt to draw Ms Vennells' attention to the Clarke Expert Evidence Advice, or the Helen Rose Report. On the one occasion when Ms Vennells became aware by word of mouth of a piece of information about past prosecutions, i.e. that POL had used an unsafe witness from Fujitsu, she informed Ms Perkins.

108. The evidence before the Inquiry has shown that there were misjudgements, mistakes, and lines of inquiry not followed by the lawyers engaged in the review of prosecution cases and in the legal advice obtained by POL at this time. These included:

a. Mr Altman KC did not consider the procedure by which Mr Jenkins had been instructed as an expert witness because no-one at POL told him that Mr Jenkins

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had not been properly instructed. He stated, however, that, looking back, this was something that he should have queried: **8 May 2024: 38:12-39:15 (INQ00001143).** Mr Altman KC agreed that, if he had been informed that Mr Jenkins may not have been properly instructed, or properly informed about his duties as an expert witness, this may have led to inquiries into broader failings by CK as prosecuting lawyers and whether CK had a conflict of interest in advising POL on past prosecutions in which CK had acted as prosecuting lawyers: **8 May 2024: 40:4-40:7 (INQ00001143**). When it was put to Mr Altman KC that if "this thread had been pulled, i.e., who has instructed, Gareth Jenkins, and how, that may have been revelatory of disclosure failings but also of misconduct by prosecutors, mightn't it?", he indicated that that was potentially correct, and that he agreed that this went to "the issue of how deep into the organisation and how close to the lawyers the problem is." **8 May 2024: 41:8-41:17 (INQ00001143**).

b. Mr Altman KC accepted in his evidence that, with the benefit of hindsight, the fact that Mr Jenkins had withheld information about bugs in Horizon in his expert evidence should have been considered for disclosure and disclosed in appropriate cases: **8 May 2024: 52:22-53:15**; **172:6-172:13 (INQ00001143**).

c. Mr Altman KC was not told by POL that the Receipts and Payments Mismatch bug (a) was known to the POL IT department and a POL operational team in September 2010; and (b) was known to three POL lawyers, Mr Wilson, Ms McFarlane, and Mr Singh, by 29 September 2010: **8 May 2024: 36:22-37:11 (INQ00001143**). He also did not know that POL had been informed about the bug the working day before the start of Ms Misra's trial: **37:18-37:23 (INQ00001143**).

d. Mr Clarke agreed in his oral evidence that he accepted that there was a view that CK's review of past prosecutions "probably wasn't as independent as it ought to have been" (**9 May 2024 68: 21 – 69:9 (INQ00001144**)) and that CK's review may have become less rigorous and observant of potential trends or themes in the cases as the review progressed: **9 May 2024 69:11-70:8 (INQ00001144**). When he was asked whether CK may have become case-hardened during the review, he said: "That's exactly what I'm referring to. That's the point I'm making: that

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because you become slightly cynical, jaded, as inevitably is going to be the case, then you do miss things. Yes, I accept that."

e. Mr Clarke also accepted that he was wrong not to have recommended disclosure following his review of Ms Misra's case: **9 May 2024: 129:11-134:5 (INQ00001144)**.

109. As stated above, Ms Vennells was told that the prosecution case review was the appropriate legal step for POL to take and that it was being conducted by specialist lawyers and subject to review by Mr Altman KC. If the lawyers engaged in the task made mistakes, failed to ask questions, failed to provide information, and became jaded and hardened to the SPM cases over time, it is difficult to identify what Ms Vennells, as a non-lawyer, could have done which would have achieved a better outcome.

The review of POL's prosecutorial role

110. In his paper for the ARC meeting on 19 November 2013 (**POL00027501**), Mr Aujard stated that Mr Altman KC had produced a report making recommendations as to the future approach to the conduct of prosecutions (which he termed the "forward looking report" to distinguish it from the "backward looking report" which had looked at the conduct of the CK review). Mr Aujard stated in paragraph 2.4 of the paper that:

> "The forward looking report is similarly positive in tone, with Brian Altman commenting that he had seen no evidence to suggest that Post Office Ltd exercises its investigations and prosecution function in anything other than a well-organised, structured and efficient manner, through an expert and dedicated team of in-house investigators and lawyers, supported by Cartwright King solicitors and their in-house counsel. That said, it was noted that Post Office Ltd's prosecution role is perhaps anachronistic, and that POL is the only commercial organisation (albeit Government owned) I can think of (apart from RMG who retains a residual prosecuting function) that has a prosecution role, and it is, to that extent, exceptional if not unique."

111. The paper asked for the ARC's directional views on potential changes to POL's prosecution policy and on further proposed work before a recommendation was made to the Board. The paper explained the rationale for POL's existing approach to prosecutions and the factors in favour of change. The Paper identified four options for the way forward:

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a. Preserving the status quo, i.e. retaining a prosecutorial capability and continuing with a prosecutions policy similar to the present one.

b. Pursuing a prosecution policy focused only on high value cases and cases involving vulnerable members of society.

c. Ceasing all prosecutorial activities but instead actively involving the Police and CPS where it was felt they were likely to take matters forward; and

d. Ceasing all prosecutorial activities "at an appropriate point in time" (see paragraph 5.1), but coupled with work to include gathering better management information ("**MI**") from the Network, improving the overall control framework around the branch network, providing more support to sub-postmasters, and an analysis of the ways in which civil proceedings could be used more effectively to reduce the financial impact once POL ceased to use the Proceeds of Crime Act to recover misappropriated money. This final option was closest to that adopted by banks and other organisations at risk of loss due to fraud and criminal activity.

112. In paragraph 5.1, Mr Aujard recommended option (d) and asked the ARC to consider the proposals for further work.

113. The ARC considered the paper at its meeting on 19 November 2013 (**POL00021427**). The minutes, and a subsequent paper by Mr Aujard dated 5 February 2014, (**POL00100193**) record that:

a. Mr Aujard stated that he was seeking the ARC's views on potential changes to POL's prosecution policy and that further work was required before any formal recommendation could be made to implement any changes.

b. The ARC raised two concerns: (a) a timing point about the potential influence of a change of approach on the Mediation Scheme; and (b) a substantive concern that the current policy acted as a deterrent.

c. Ms Vennells stated that the business was not stating that it would never bring prosecutions, but that it would be more circumspect in the cases it chose to take and there were other means of deterrence.

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d. It was agreed that before any firm decision could be made, further work was required (a) to determine the financial consequences of amending POL's prosecution policy such that fewer cases would be sent to the criminal courts; (b) to enable the Committee to understand the work being done as part of the Business Improvement Programme to improve the early detection of losses; and (c) to understand how banks and other large companies dealt with criminal losses caused by employees.

e. The ARC directed that the decision on POL's prosecution policy should be taken to the January 2014 Board meeting.

114. Ms Vennells submits as follows in relation to this meeting:

a. There was no suggestion in Mr Aujard's paper that POL should discontinue prosecutions because of there being any reason to suspect that its past conduct of prosecutions had been inappropriate. The starting point of Mr Aujard's analysis was that Mr Altman KC had not identified anything during his review of POL's prosecutorial role to suggest that POL's approach to prosecutions had been anything other than "well-organised, structured and efficient."

b. Mr Marnoch, then the chair of the ARC, reviewed the minutes in the course of preparing his witness statement and has said that he was not surprised that the ARC declined to make a decision without exploring the implications of the options further: WS ¶60 (**WITN11570100**).

c. Ms Vennells was attempting during the meeting to identify a compromise that would allay the concerns of the ARC that POL would lose its ability to deter theft if it abandoned prosecutions altogether. It is clear from the minute that Ms Vennells was not proposing that POL should continue its current approach to prosecutions.

115. Mr Aujard's paper dated 5 February 2014 (**POL00100193**) set out three options for the future of POL's prosecution policy:

a. Preserving the status quo i.e. retaining prosecutorial capability and continuing with a prosecutions policy which is substantially the same as that which has been used in the past.

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b. Pursuing a prosecutions policy more focused on more egregious misconduct - e.g. higher value cases/cases involving vulnerable members of society/cases of involving particularly wilful wrongdoing, and engaging with the police in relation to other matters;

c. Ceasing all prosecutorial activities but instead actively involving the police/CPS etc where it is felt that they are likely to take matters forward.

116. He recommended option (b) on the basis that (a) did not gain a large degree of support at the November 2013 ARC meeting and (c) was not discussed in any detail because POL had been advised that budgetary constraints meant that the CPS was unlikely to prosecute any but the most serious cases. For option (b), Mr Aujard proposed that POL's prosecution policy should apply financial and fact-based filters to focus on high value crimes involving egregious conduct.

117. The proposal was discussed by the ARC by email on 8 and 9 February 2013 (**UKGI00043711, POL00104233, POL00027687, POL00100224**). Opinion was divided between Ms Perkins and Ms Storey, who favoured option (c), and Mr Marnoch, Mr McCausland, and Ms Vennells, who favoured option (b). As Mr Marnoch correctly observes in his witness statement, none of the members of the ARC favoured the status quo: WS ¶62 (**WITN11570100**). The debate was limited to whether POL should retain a scaled back role for prosecutions for the purposes of deterrence. The POL Board approved option (b) at its meeting on 26 February 2014 (**POL00021522**). It is submitted that this was not an unreasonable decision to make, having regard to the factors set out for consideration by Mr Aujard.

The Second Sight Review In 2012-2013 And The SSIR

118. This section addresses key themes in relation to the Second Sight Review in 2012 and 2013 and the SSIR published on 8 July 2013.

Statements to MPs in May and June 2012

119. The evidence in the Inquiry has shown that statements in the briefing documents provided to Ms Vennells for the meetings with MPs on 17 May and 18 June 2012, and statements that Ms Vennells was recorded as making at the meeting with MPs on 18 June 2012

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(**JARB0000001**), were incorrect as a matter of fact, or inappropriate. Ms Vennells was asked about two of these statements during the course of her evidence:

a. "Every case taken to prosecution…has found in favour of [POL]." At the time, Ms Vennells believed this statement to be true because Ms Crichton, the GC, had made the same statement at the Board meeting in January 2012: (**POL00021503**); **22 May 2024 47:18-47:24; 53:10-55:6**; **56:11-57:7** (**INQ00001151**). Ms Vennells explained: "…if you're given information by the highest lawyers in the organisation, you take it completely as the truth…"[48] Ms Vennells submits that she was entitled to rely on an unequivocal statement by the GC to the Board for its factual accuracy.

b. "Temptation is an issue". Ms Vennells apologised for this statement and explained that it was an assumption based on two recollections. First, there were examples of cases where she had been told that this had occurred, at least in theory. Second, she had been told by Mr Thomson of the NFSP that, on rare occasions, SPMs might borrow cash from their branch to fund purchases, albeit with the intention of putting it back: **22 May 2024 57:10-59:1** (**INQ00001151**).

120. Ms Vennells set out in ¶¶ 262 to 286 of PV WS1 (**WITN01020100**) how she prepared for the meetings with MPs. The briefing documents and the pre-meeting discussions were fed into by senior managers with specialist knowledge of IT (Ms Sewell) and legal matters (Ms Crichton). Ms Vennells submits that she was entitled to rely on them to provide accurate information and professional opinions about the matters within their areas of management responsibility.

The decision to instruct forensic accountants

121. On 21 May 2012, Ms Lyons sent Ms Vennells (cc. Ms Crichton) an email which recorded Ms Perkins' recollection of what POL had agreed with Lord Arbuthnot at the meeting on 17 May 2012 (**POL00105491**). It stated that POL would find "a forensic accountant with good people skills and ask them to look at each case, talk to the subpostmaster, see the records and files, and look at how the software is validated." In her evidence, Ms Perkins said that the decision to engage a forensic accountant rather than Deloitte was dictated

[48] Ms Crichton also believed that the statement was true: **24 April 2024: 7:12-8:15** (**INQ00001135**).

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by Lord Arbuthnot's opposition to the involvement of a large organisation: Perkins WS ¶149 (**WITN00740100**); **5 June 2024 74:7-75:15** (**INQ00001156**). Ms Vennells says that she thought that using one of the Big Four firms may have come across as too corporate and that they wouldn't have had an understanding of running a Post Office branch or a small retail business: **23 May 2024 4:8-4:15** (**INQ00001152**).

122. It is possible that it was Lord Arbuthnot's idea that POL should engage, specifically, forensic accountants to review MPs' constituency cases. On 18 July 2012, in an email update to MPs about his discussions with POL (**POL00096937**) Lord Arbuthnot stated: "The last time I was in touch we were discussing how the matter might be resolved with senior management at the Post Office. I suggested to them that they should put in place forensic accountants who would investigate the cases."[49] Lord Arbuthnot's interest in who was appointed to the investigation is shown by an email on 19 June 2012 to Mr Channer of Shoosmiths (**POL00096665**) in which he stated that the plan was "for [POL] to appoint an independent forensic accountant (to be chosen in consultation with me) who will examine each case individually in order to establish exactly what has happened."

123. Ms Crichton recalled that Ms Perkins asked her to find a forensic accountant "who might be able to help in a different way to that described in the Deloitte report, Deloitte proposal" who "shouldn't be one of the big four; had to be somebody who would be able to carry out the review; would be somebody who would be credible to the MPs, James Arbuthnot, Justice for Subpostmasters; and would be able to have to conversation with subpostmasters": **23 April 2024 23 52:17-53:20** (**INQ00001134**). Ms Crichton obtained a proposal from Second Sight on 1 July 2012 (**POL00180209**) and could not remember whether the possibility of instructing Deloitte instead of Second Sight, or engaging Deloitte to conduct an audit as an additional exercise was discussed at a meeting on **7 July 2012: 23 April 2024 57:4-58:3** (**INQ00001134**). She did recall that Ms Perkins' objective was to satisfy the MPs, and that a review by Second Sight of their constituency cases was more likely to achieve that than a review by Deloitte.

124. Ms Perkins said that Second Sight were not preferred over Deloitte because the proposed Second Sight review was narrower in scope, i.e. a review of individual cases, rather than

[49] It was reported to the Board on 23 May 2012 that "The business had also agreed to use a forensic accountant to investigate the system and give further comfort to those concerned about these cases." (**POL00099520**)

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a forensic audit of the system. Second Sight were chosen due to Lord Arbuthnot's opposition to an organisation such as Deloitte: **5 June 2024: 78:14-79:7** (**INQ00001156**).

125. For the reasons stated above, Ms Vennells submits that the decision to instruct Second Sight was not a means to evade a review of the system by Deloitte. The engagement of forensic accountants to review MPs' cases was a practical solution, led by the Chair, to the concerns raised by Lord Arbuthnot. This is a reasonable approach to have taken.

Richard Morgan KC's advice on 12 June 2012

126. On 12 June 2012, Ms Crichton, Mr Flemington and Gavin Matthews (Bond Pearce) attended a conference with Richard Morgan KC. According to Ms Crichton, the conference was arranged after she had asked Bond Pearce for help in drafting Second Sight's terms of reference: SC WS ¶135 (**WITN00220100**); **23 April 2024 50:7-50:16** (**INQ00001134**). A file note by Bond Pearce (**POL00006484**) records Mr Morgan KC's advice at the conference:

    a. The instruction of an independent expert to prepare a report on Horizon was the highest risk response to concerns about the system. "What will it achieve? It will not be able to address any of the civil/criminal cases dealt with under "Old Horizon". Will it seek to review particular cases? If so, which ones?"

    b. POL would be "damned if they do and damned if they don't": if the findings of an independent review were positive, they would be seen as a whitewash, and if they were negative, they would open the floodgates to damages claims.

    c. A less risky approach would be to take the relevant MPs privately through particular cases in which they were interested.

127. Ms Crichton cannot recall the conference and there is no evidence that she briefed the Board about the advice: in paragraph 154 of her witness statement, Ms Crichton seems to accept that she did not brief the Board. Her only recollection of communicating the advice within POL is that she understood Mr Morgan KC's point of view that POL was damned either way if it instructed an independent investigator "in that POL was under pressure from different sides. I recollect that I flagged this to Ms Perkins and Ms Vennells

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in a meeting following the conference" (SC WS ¶151-154) (**WITN00220100**). There is no evidence that Ms Perkins or Ms Vennells saw the file note or a document summarising Mr Morgan KC's advice. Ms Perkins said that she did not know about Mr Morgan KC's advice at the time: Perkins WS ¶155 (**WITN00740100**); **5 June 2024 170:17-171:3** (**INQ00001156**). That was also Ms Vennells' evidence: PV WS1 ¶309 (**WITN01020100**): **23 May 2024 15:5-15:23** (**INQ00001152**).

128. Even if Ms Crichton did tell Ms Perkins and Ms Vennells about the "damned if you do, damned if you don't" point of view, Mr Morgan KC's advice had no relevance to POL's approach to the Second Sight Review:

a. Ms Crichton said that she did not believe that the advice influenced POL's decision to engage Second Sight rather than Deloitte: **23 April 2024 53:21-53:24** (**INQ00001134**). It would be odd if it had: by the time Mr Morgan KC gave his advice on 12 June 2012, POL was already progressing the appointment of Second Sight.

b. Far from following Mr Morgan KC's advice, the package of measures forming the Second Sight Review was designed to maximise participation:

i. The final agreed remit of the Inquiry imposed no limitation on who could ask for an investigation by Second Sight: it was open to all former and current Horizon users.

ii. To encourage Horizon users to come forward, and at the suggestion of the JFSA, POL agreed with the JFSA that no-one who presented a case for investigation would be subject to any detriment, unless the case was presented in bad faith or dishonestly, or disclosed criminal conduct: PV WS1 ¶¶317-319 (**WITN01020100**).

iii. POL agreed that the JFSA, as well as MPs, could refer cases for investigation: PV WS1 ¶321 (**WITN01020100**).

iv. POL publicised the Second Sight Review via Subspace (the branch Network magazine) and at NFSP meetings: PV WS1 ¶321 (**WITN01020100**).

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Conduct of the Second Sight Review

129. In an email to Ms Walker and Mr Warmington on 25 January 2013 (**POL00097402**), Mr Henderson stated that Second Sight wished to prioritise cases which had real potential to show whether there were problems with Horizon. This idea became Second Sight's primary methodology for their review leading to the SSIR. Rather than investigating each case individually, Second Sight decided to consider specific problems reported in cases and provide the evidence and their conclusions to POL in "Spot Reviews".

130. As of March 2013, POL expected Second Sight to produce up to 30 Spot Reviews: see the POL briefing note dated 11 March 2013 at (**POL00097589**). In addition to the Spot Reviews, Second Sight intended to investigate themes or problems which they had identified in multiple cases:

> "• Transaction anomalies following communications or power failure
>
> • Transactions not entered by SPMR or staff
>
> • Missing or duplicated transactions associated with Postage Labels, Phone Cards, GIRO payments, ATMs or Cheques
>
> • Training and Support issues
>
> • POL team at Bracknell
>
> • Loss of Audit Trail
>
> • Accounting issues at end of trading period."

131. Ms Lyons reported to Ms Vennells in an email on 11 March 2013 (**POL00097592**) that POL had two teams working on the Review.

132. The first team consisted of Ms Lyons, Ms Crichton, Mr Baker, Ms Van Den Bogerd, Ms Renner and Mr Ismay, who were having regular meetings with Second Sight. Within this team:

    a. Ms Crichton was the "owner" and leader of the Second Sight Review within POL.

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b. Mr Baker was a senior POL IT manager who reported directly to Ms Sewell: Baker WS ¶15 (**WITN04730100**). He had worked on the Second Sight Review since its earliest stages in 2012. His Second Sight-facing role included liaising with Second Sight and co-ordinating their information, document, and data requests: Baker WS ¶17 (**WITN04730100**).

c. Ms Van Den Bogerd was a senior manager in Network. She helped obtain information for Second Sight and says that she later became a "go to" person for information for the Spot Reviews: Van Den Bogerd WS1 ¶66 (**WITN09900100**).

d. Mr Ismay, as Head of P&BA, led the teams which managed branch accounts and dealt with SPMs' queries and complaints.

133. The second team was called the Working Group. Its role was to consider the evidence presented by Second Sight in the Spot Reviews and produce POL's response. The briefing note attached to Ms Lyons' email to Ms Vennells on 11 March 2013 (**POL00097589**) stated that this team comprised representatives of P&BA, Network, Legal, IT, Security, and Fujitsu (for data extraction and technical assistance).

134. The membership of the Working Group can be seen from Mr Baker's email on 20 February 2013 at (**POL00097507**). It included Ms Crichton, Ms Van Den Bogerd, Ms Lyons, Mr Posnett (POL security), Ms Bolsover (a senior debt recovery manager in P&BA), and Mr Jenkins of Fujitsu. The group met regularly (see e.g. (**POL00097550**); (**POL00186580**); (**POL00099262**)) and produced and reviewed POL's draft responses to the Spot Reviews see for example (**POL00097612**); (**POL00097693**); (**POL00097736**); (**POL00097938**). (**POL00186602**) and (**POL00098145**) show that POL's responses to Spot Reviews could not be released to Second Sight until they had been approved by Ms Crichton, Ms Lyons and Ms Van Den Bogerd.

135. Ms Vennells did not attend the Working Group meetings. She had no role in directing or deciding what information POL would provide to Second Sight, and she was not involved in or consulted about POL's substantive responses to the Spot Reviews. These were operational matters which required the specialist know-how of the teams which were dealing with Second Sight. Mr Baker states in his witness statement (**WITN04730100**) at ¶17 that Ms Vennells was part of a "Core Team", together with Ms Perkins, Ms Lyons, and Ms Van Den Bogerd, which met monthly to receive oral and written updates on the

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Second Sight Review. Ms Vennells does not recognise the term "Core Team", or the arrangements that Mr Baker describes. There is no evidence of the organisation of monthly meetings involving the participants named by Mr Baker. The monthly written briefings that Mr Baker claims to have prepared do not appear to be in the disclosure. The evidence indicates that Ms Vennells received oral and written updates, mainly from Ms Lyons and Ms Crichton, to report on the progress of the review and to prepare her for meetings with stakeholders: see for example (**POL00097589**); (**POL00098159**); (**POL00186962**); (**POL00098789**).

136. One matter on which Ms Vennells did need visibility was whether Second Sight or the POL teams engaged in the project had identified problems with the Horizon IT system. The information she received during the Review was that neither Second Sight nor POL had identified any problems with the IT system:

a. On 7 March 2013, Lord Arbuthnot wrote to Ms Perkins to notify her that he was to host a meeting on 25 March 2013 at which Second Sight would make a presentation to MPs and the JFSA (**POL00097588**). On the second page of the letter, Lord Arbuthnot stated that:

> "In my discussions with Ron and Ian, I gather that questions have been raised over the absolute integrity of Horizon, though without their being so fundamental as to say that the system is not fit for purpose. Since it is a system that remains in current use, there is the risk that existing SubPostmasters and mistresses may find themselves in exactly the same position as those whose cases are being investigated. I know that definitive results are not yet available, but I hope the Post office would be ready to address this issue."

b. Ms Lyons emailed Ms Vennells a copy of this letter on 11 March 2013 (**POL00097587**) and she replied on the same day (**POL00097592**):

> "Now to my biggest concern - we are taking big decisions on IT currently and irrespective of the independence of the SS work, which it is critical to protect, I/we should be aware asap if there are emerging issues with Horizon. Who from IT is in the loop, do you know? And do you know if we have a view as to how robust the SS findings are - ie., there may be similarities of accounts from Spmrs - but are they being born out by analysis of what actually happened within the system itself?"

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c. At 17:07 on 19 March 2013, Ms Lyons reported to Ms Perkins (cc. Ms Vennells) that she and Ms Crichton had held a meeting with Second Sight (**POL00097704**) and the upshot was that: "… SS were surprised James now felt there was harder evidence against the system. They used the phrases: no evidence of widespread systemic failure; the number of cases we are seeing is small; the pattern aligns with the themes which are already in the public domain." At 17:30, Ms Crichton emailed Ms Vennells about the same meeting (**POL00097719**). Ms Crichton said that Second Sight had confirmed during the meeting that "there is no evidence of widespread systemic failure of the Horizon system from the work that they have already completed".

d. A briefing for Ms Vennells to use on a call with Lord Arbuthnot on 23 May 2013 (**POL00098317**) stated at paragraph 2.6 that the investigation had been running for a year and to date no evidence of systemic failures had been found.

e. A briefing sent to Ms Perkins and Ms Vennells in advance of the Board call on 1 July 2013 (**POL00098878**) stated that POL understood that Second Sight had not identified any systemic issues with the Horizon system.

The decision that Second Sight would produce an interim report

137. POL's expectation when Second Sight were engaged was that the Review would be complete by the summer of 2013: see the Chair's update in the January 2013 Board minutes at (**POL00021510**). However, in an email on 13 March 2013, Ms Lyons reported to Ms Vennells that Second Sight did not expect to finish by the parliamentary summer recess and that the costs of the exercise had risen significantly (**POL00097600**). Ms Lyons suggested that POL could ask Lord Arbuthnot to help prevent further slippage and budget overruns.

138. In a letter to Mr Bates on 16 April 2013 (page 21 of (**POL00090358**) Lord Arbuthnot referred to a suggestion he had made to Second Sight that they should focus on the two cases most likely to reveal systemic problems, and give the MPs the results, if only preliminary, by the summer. Ms Vennells spoke to Lord Arbuthnot on 23 May 2013 and

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proposed that Second Sight should produce a report considering two or three cases before the parliamentary recess, followed by a final report in October 2013.[50]

139. POL's note of the call on 23 May 2013 (**POL00098377**) records that Lord Arbuthnot did not understand the confusion because there had been emails with Second Sight, who had not indicated that they were not progressing the top two or three themes. In an email on 4 June 2013 (**POL00095434**), Lord Arbuthnot asked Second Sight to consider producing an interim report before recess on 18 July 2013, as the MPs had been promised a report by then. The interim report should concentrate on a few of the strongest complaints about POL and consider whether there were any flaws in Horizon or in POL's processes or training. On 13 July 2013, Ms Walker informed Ms Lyons that Second Sight had agreed to present an interim report to MPs at a meeting on 8 July 2013 (**POL00098534**).

140. Ms Vennells was asked on 23 May 2024 why the scope of what became the SSIR was narrowed to a small number of cases. Her answer was to the effect that it was because of the commitment made to MPs about the timescale in which they would be given a report: **23 May 2024 24:11-24:18** (**INQ00001152**). The documents show that this answer was correct: in fact, Lord Arbuthnot had proposed a preliminary report dealing with two MP cases by the summer of 2013 before the idea had occurred to POL.

[50] It was suggested to Ms Vennells during her oral evidence on 23 May 2024 that she wanted to persuade Lord Arbuthnot "to wind their investigation up on the basis of two to three MP cases, answering the question 'Have system defects in Horizon resulted in the wrongful conviction of subpostmasters'"?: **23 May 2024: 44:10-44:16** (**INQ00001152**). The document that Ms Vennells was taken to in this part of her evidence (**POL00098317**) was a briefing note in preparation for her call with Lord Arbuthnot on 23 May 2013. This document proposed a "preliminary report" on two to three MP cases by July 2013, and left open for discussion the appropriate way to deal with the remainder of the MP cases. It therefore did not propose that the "preliminary report" would conclude the investigations. Ms Vennells received a further briefing note for the call with Lord Arbuthnot on 23 May 2013 (**POL00115880; POL00115881**). This contemplated that Second Sight would produce a preliminary report by July 2013 and a final report by October 2013 dealing with those MP cases where there was sufficient evidence for Second Sight to investigate. This referred to the fact that, as Lord Arbuthnot stated at a meeting on 22 July 2013, there were a number of cases referred to Second Sight through the MPs "who had provided no evidence": see page 4 of the transcript of the meeting at (**SSL0000108**). These were proposals to achieve closure on the cases which was something that both Lord Arbuthnot and POL wanted: see his email to Second Sight on4 June 2013 at (**POL00095434**). In any event, the mechanism that was put in place to continue the investigation– the Mediation Scheme – was open to all former SPMs and counter clerks who believed they had suffered a loss or been treated unfairly as a result of Horizon.

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The weeks before publication of the SSIR

141. As 8 July 2013 drew closer, POL still had little clarity from Second Sight as to what the SSIR would say, and they appeared to be running out of time to produce a complete report in time for POL to consider it and prepare its response:

a. Ms Lyons updated Ms Vennells on 21 June 2013 after a call with Second Sight (**POL00098655**). Ms Lyons' took from her conversation with Second Sight that: "There are still risks with what the report will say. Not around the System but around the wider issues eg training and support (which SS are counting as part of the Horizon operating model)." Ms Lyons had put in place calls with Second Sight every day from the following Tuesday until the report was finalised.

b. POL had known since around 4 June 2013 that the Rudkin case would be one of the Spot Review cases featured in the SSIR (**POL00029590**). On 27 June 2013, Mr Warmington told Ms Crichton that Second Sight were still trying to bottom this case out and that it would "go to the wire" (**POL00189210**).

c. At 13:13 on 28 June 2013, Ms Lyons reported to Ms Vennells that some of Second Sight's case studies for the SSIR were still incomplete (**POL00098789**). Ms Lyons emailed Ms Vennells again at 17:27 (**POL00371707**), following a meeting with Second Sight, with an update on the status of the four Spot Reviews that Second Sight intended to attach to the SSIR:

> "…we pushed them hard to come off the fence and call things by the evidence they have been given. I now think they will now call at least one case in our favour, Rudkin and the comms failure. Although Rudkin is real our word against his. The stamps case they are waiting for the spm to respond to them. I do not think she will suddenly admit a mistake so my frustration here is they will not resort to the evidence. The 4th case the scratch cards they have only just started looking at."

d. There was a related concern that Second Sight were not properly interrogating the evidence that POL had supplied to them. This concern was articulated by Ms Lyons in an email to Ms Perkins on 1 July 2013: "…they are only concluding a case if the spmr accepts the Post office's evidence, they are not using the base forensic data to come to their own verdict and putting that to the spmr. Because of this they could

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be presenting cases on the 8th which are incomplete and saying they haven't got enough evidence." (**POL00189722**).

e. This concern was also mentioned in the briefing note sent to Ms Perkins (cc. Ms Vennells) for the Board call on 1 July 2013 (**POL00098878**):

> "They haven't (yet) reviewed all the evidence we have given them, and hence may not be in a position to set out definitive conclusion on all four cases.
>
> It appears that they are not focussing on empirical evidence…..in the way we would expect forensic accountants to – instead they have a tendency to rely on the spms' interpretation / recollection of events (and in some cases they appear to have 'led the witness')"

142. While Ms Vennells was concerned with the lateness and incompleteness of the SSIR, her view was that POL should not be heavy-handed with Second Sight. Her opinion, as set out in an email to Mr Edwards on 27 June 2013 (**POL00098777**), was that POL should seek to persuade Lord Arbuthnot that the SSIR should not be published until Second Sight had completed its work:

> "We also need to be very careful not to overplay our hand with SS - they could turn out to be quite dangerous if we threaten them with legal action or attempt to replace them with another firm. Easy for this to be portrayed in the media as heavy handed tactics because we don't like their findings (it plays directly into the existing perceptions we're trying to counteract). So I think we're stuck with the softer option of explaining to JA calmly but firmly why he cannot allow SS to disseminate a misleading interim report - it either needs to be delayed or repositioned as a very neutral status update (with more detail on the one case that has been resolved)."

143. Ms Vennells reported to Ms Perkins in writing (it is probable that there were also discussions between them) that this would be POL's approach at 13:14 on 28 June 2013, when she sent Ms Perkins an email from Ms Lyons setting out the steps that were being taken to prepare for the publication of the SSIR (**POL00371699**). The steps Ms Lyons set out included:

> "We have a call with SS this afternoon and we will run through the individual cases to see how far they will have got by next Tuesday's briefing with [Lord Arbuthnot] and the meeting date on the 9th, this will inform my conversation with [Ms Walker] on Monday.

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> I am going to spend time with Janet at 0900 on Monday morning, she says she can give me as long as it takes. My approach will be to try to get to understand the status of the review and the risk to James and us of an incomplete interim report. I will share the fact that SS are not using all the evidence they are being given and our concern is that there [sic] approach to try and keep everyone happy is not how we would expect a forensic accountant to behave."

144. Ms Perkins supported the approach. She replied to Ms Vennells at 14:50 (**POL00098797**): "(Keep aiming high here! That is for the goal of no interim / no meeting. But I recognise that this is not within our control.)" However, when Ms Lyons spoke to Ms Walker on 1 July 2013, Ms Walker stated that she was sure that Lord Arbuthnot would want the meeting on 8 July 2013 to go ahead: see Ms Lyons' report of the conversation to Ms Perkins at 2pm on 1 July 2013 (**POL00189722**).

145. A draft briefing note on the SSIR, dated 1 July 2013, records that Ms Crichton, Ms Sewell, Ms Lyons, and Mr Baker would meet Second Sight that afternoon "when we aim to get a clearer picture of the timing for delivery": see paragraph 8 of (**POL00029625**). Ms Vennells, having talked to Ms Crichton, emailed Ms Perkins about the outcome of the meeting at 22:17 on 1 July 2013: (**POL00098887**):

> "I caught up with Susan this evening after we finished. She had finished her meeting with SS and was of the view that they do now understand the risk of being caught up in something bigger and more sensitive. She is hoping their report will be more balanced, should say they have found no evidence of systemic Horizon (computer) issues but will confirm shortcomings in support processes and systems. And that PO has already identified and corrected a number of these. I hope when they speak to James tomorrow they will confirm all this. They will also want to say their work is not finished and therefore still not conclusive."

146. The reference in this email to Second Sight being involved in something "bigger and more sensitive" was most likely, in Ms Vennells' view to be a reference to a point made in several POL documents from this time, including in a draft letter from Ms Vennells to Lord Arbuthnot following the publication of the SSIR (**POL00029649**):

> "We also discussed the vital importance of drawing a clear distinction between (i) systemic issues with the Horizon computer system – of which it is our understanding that none have been found – and (ii) the wider support systems. Confusion about this distinction could have a serious impact for the Post Office, sub-postmasters and our customers. It is therefore essential that this distinction is clearly applied and followed in the Second Sight report and all associated communications."

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147. Ms Vennells has explained this concern in her first witness statement at ¶460:

a. POL wanted to ensure that media reporting of the Interim Report was as accurate and proportionate as it could be. A major area of POL's concern with the Interim Report was that Second Sight had defined "Horizon" to mean not only the software, but the surrounding infrastructure and processes, including training and support. Second Sight's view of their remit was not itself the concern: I agreed with them that training and support fell within their terms of reference.

b. However, there was a real danger that public and network confidence in Horizon would be undermined unfairly if stakeholder comments and media reports failed to capture the distinction between Second Sight's findings about the software and their findings on other aspects of what they defined in the Interim Report as the "system", such as training and support.

c. Relatedly, we wanted to ensure that public statements and media reports described accurately what we understood to be the broad thrust of the Interim Report, namely, that while Second Sight had identified no systemic faults in the Horizon IT system, there would be criticisms of POL's training and support for SPMs.

d. There are references in the documents from this time to POL's "reputation". To me, this did not mean POL's reputation as a company or the reputation of anyone who worked for it. Reputation in that sense was not my concern. My overriding concern was that the public should not lose confidence that their local Post Office would be able to carry out their transactions (many of which were very personal to them, such as pension payments) honestly and accurately and they could trust the Post Office with their affairs. If this confidence was undermined by inaccurate or unfair reporting of the Interim Report, it would be a huge disservice to the general public.

148. Many of POL's internal communications during the period leading up to the publication of the SSIR on 8 July 2013 were concerned with POL's external communications about the SSIR and its approach to Lord Arbuthnot rather than the substance of the issues that the SSIR would address. However: (1) as at 1 July 2013, POL was still seeking to establish from Second Sight what, broadly, the SSIR would say; and (2) in circumstances where the SSIR would be presented to MPs a week later on 8 July 2013, it was sensible and appropriate for POL to develop a communication plan.

The Board call on 1 July 2013

149. During a Board call at 17:15 on 1 July 2013, Ms Vennells gave the Board an update on the Second Sight Review and the SSIR (**POL00021515**):

> "a. The CEO apologised for the short notice in keeping the Board updated but explained that issues had arisen over the last couple of days. She gave an update

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on the Horizon review which was being undertaken by SS and their interim report which was to be presented at a meeting for MPs on the 8th July. The investigation to date had found no systemic issues with the Horizon computer system but had highlighted areas for improvement in support areas such as training.

b. The CEO explained that the Horizon, like any large computer system, would occasionally have anomalies and two were know[n] of over recent years. The Business has dealt with these anomalies to ensure no sub postmaster was out of pocket and these anomalies had not affected any of the cases which Second Sight had reviewed. Second Sight had been told of these anomalies and they would include them in their report.

c. The CEO was concerned that the report from the independent forensic accountants was not as factual as expected and could lead to loose language at the MP meeting."

150. Ms Vennells makes the following observations about the Board call:

a. Ms Vennells shared with the Board no more and no less than she herself knew about the likely contents of the SSIR as of 1 July 2013. It was correct, based on what Ms Vennells had been told (see paragraph 136 a) – e) above), that the investigation to date had found no systemic issues. The phrase "to date" was an accurate qualification, because no-one at POL knew at this stage whether Second Sight would or would not make a finding in the SSIR that they had identified systemic problems.

b. The SSIR was not on the agenda for the Board call. The reason for this was as follows:

i. On the recommendation of Mr Edwards and Ms Lyons (**POL00098321**), Ms Vennells' CEO report for the May 2013 Board meeting on 21 May 2013 did not include an update on the Second Sight Review, which Mr Edwards and Ms Lyons felt would be premature. At that stage, Ms Vennells was due to speak to Lord Arbuthnot on 23 May 2013 to discuss the future conduct of the Review. The Board asked at the meeting on 21 May 2013 for a note to update on the position with the Second Sight Review.

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ii. On 30 June 2013, Ms Perkins emailed Ms Vennells, Mr Edwards, Ms Lyons, and Ms Crichton (**POL00098816**) stating: "I think we will have to tell the Board about SS as there is a danger that we could be in a difficult situation in the midst of all this before we have another opportunity to tell them. And we do owe them an update". Ms Vennells replied (**POL00098816**) stating that "we" (i.e. the individuals to whom Ms Perkins had sent her email) had decided to do exactly that, and rather than send the Board a written brief at this stage, it was thought better to wait to hear from Ms Lyons about her meeting with Ms Walker on 1 July 2013. Ms Perkins did not disagree with this approach.

Ms Vennells' reaction to the SSIR

151. How Ms Vennells reacted to the SSIR was inevitably and properly influenced by what she was told about the SSIR by the internal teams that had worked on the Second Sight Review project.

152. Ms Vennells received two main forms of feedback on the SSIR. (**POL00099096**) is a commentary on the SSIR which criticised some of Second Sight's language, the incompleteness of Second Sight's conclusions, and their characterisation of POL's responses to the Spot Reviews as being too technical for SPMRs, (POL's point being that they were intended to be read by Second Sight as forensic accountants). However, the more important feedback concerned the substance of the investigation.

153. A briefing note on the SSIR was sent to Ms Vennells on 3 July 2013 (**POL00113369**). This was produced before Second Sight had begun to circulate drafts of the SSIR and was therefore based on the work that POL had carried out during the review:

a. It stated at paragraph 4 that POL, with assistance from Fujitsu, had provided Second Sight with branch files and transaction data, and had provided detailed responses on specific issues.

b. Paragraph 16 stated that POL believed that Second Sight had not found evidence of systemic problems with the Horizon IT system, either in the four cases that they would profile in the SSIR, or in any of the other six cases which had been the subject of Spot Reviews, or otherwise in its review.

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c. The section on page seven under the heading "Post Office Activities" set out the ways in which POL had supported Second Sight and responded to all ten Spot Reviews produced by Second Sight. This included:

i. Each Spot Review had been thoroughly reviewed through the leadership of senior management.

ii. Senior personnel within POL had been consulted on the issues raised by each Spot Review.

iii. POL had liaised closely with Fujitsu to ensure that POL's responses were supported by its technical expertise.

iv. POL had collated and interrogated transaction records in those instances where Second Sight had identified particular transactions for investigation.

d. The section on page 8 under the heading "Overview of Post Office's responses" stated that all ten Spot Reviews had been fully addressed by POL and that none of them had revealed any error in Horizon.

e. Annex 2 to the briefing note set out POL's responses to the four Spot Reviews that the SSIR was expected to address. POL's response to Mr Rudkin's case is discussed in the section of these submissions on BEDs and remote access. As regards the other Spot Reviews, Annex 2 recorded that POL had investigated the allegations by the SPMs using technical data and specialist IT knowledge and had concluded that they were wrong.

154. Ms Vennells submits that she was entitled to rely on the professional opinion of the team of specialists which had been tasked with addressing the Spot Reviews within the structure of the Working Group. The four Spot Reviews raised technical and IT issues, and she had no reason to question the accuracy or professionalism of their conclusions.

155. Ms Vennells discusses below the key aspects of her reaction to the SSIR (**POL00029650**).

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Ms Vennells' understanding of the phrase "no systemic issues"

156. Paragraph 8.2 (a) of the SSIR stated that one of Second Sight's preliminary conclusions was that "We have so far found no evidence of system wide (systemic) problems with the Horizon software."

157. Second Sight were not required to include this conclusion in the SSIR. They chose to include it, and a person reading the SSIR was entitled to assume that it represented Second Sight's full and professional opinion on that issue. Mr Henderson stated in his live evidence that paragraph 8.2 (a) of the SSIR was based solely on Second Sight's review of the four Spot Reviews attached to the SSIR, one of which (Mr Rudkin's case) was incomplete: **18 June 2024 128:18-129:11** (**INQ00001162**).

158. However, this limitation was not mentioned in the SSIR, nor in any communication from Second Sight to POL at the time. Indeed, the impression given by Section 2 of the SSIR was that Second Sight had carried out considerable, though not yet completed, work on the 47 cases that had been referred to them for investigation. In particular, paragraph 2.7 stated that:

> "2.7. After examining all of the available documents and in some cases the Horizon computer data relating to each case, Second Sight has been making contact with each SPMR in order to obtain, through telephone calls and face-to-face interviews, the SPMR's version of events. Second Sight then summarised the SPMR's assertions into one or more 'Spot Reviews'. To date, 29 Spot Reviews have been created by Second Sight and other Spot Reviews are planned. Ten Spot Reviews have been sent to POL and a formal response received. Nineteen Spot Reviews are currently 'work in progress.'"

159. Ms Vennells submits that a reasonable reader of the SSIR as a whole would not have understood that the conclusion in paragraph 8.2 (a) was based solely on the four Spot Reviews, as opposed to the totality of the investigatory work carried out by Second Sight which they described in Section 2 of the SSIR. The limitation described by Mr Henderson on the scope of the phrase "systemic issues' was discussed with Ms Vennells on 23 May 2013. She stated that Second Sight had been working on the review for ten months and had not examined just two or three cases: **23 May 2024: 34:14-34:25** (**INQ00001152**). This was a reasonable viewpoint.

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160. Furthermore, Ms Vennells' written briefing (**POL00113369**) stated that POL understood that Second Sight had not identified any systemic issues in the four Spot Reviews to be attached to the SSIR, nor in the other six Spot Reviews sent to POL, nor otherwise during its investigation. This document had been prepared by reference to the work of the POL team, including senior IT managers, which had worked on the Second Sight review. As she has stated in her written evidence, it was not a matter within Ms Vennells' competence to determine whether an IT issue was systemic or otherwise: PV WS1 ¶418 (**WITN01020100**).

161. In short, Ms Vennells was told both by Second Sight and POL's internal team of specialists that no systemic issues had been found during the investigation. Ms Vennells submits that she was entitled to rely on what she was told and that, based on what she was told, it was not a limited or misleading description of one of the main conclusions of the SSIR.

The measures announced by POL on publication of the SSIR

162. Ms Vennells sets out in paragraphs 459 to 492 PV WS1 (**WITN01020100**), her discussions with Lord Arbuthnot, Mr Bates, and internally at POL which led to the announcement of three measures in response to the SSIR (**POL00099129**). These were:

    a. The creation of a working party to complete the review of the cases brought forward for investigation by MPs and the JFSA. The working group would examine the themes identified by Second Sight in the Interim Report together with any new themes that emerged from the individual cases. The JFSA had been invited to join this working group.

    b. A review, chaired by an independent figure, to determine how an independent safety net might be introduced to adjudicate disputed cases in the future. Again, the JFSA had been invited to participate in the process; and

    c. A new Branch User Forum to enable SPMRs to provide feedback on training and support processes to senior management on an ongoing basis.

163. The thinking behind each element was as follows:

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a. The investigation to date had developed in a piecemeal fashion without any structure, oversight, or clear lines of communication between the key stakeholders. The working group was intended to fill these gaps by creating a formal structure for the key stakeholders to collaborate and to give direction to the ongoing investigation of the cases.

b. A review to consider creating a mechanism for resolving future disputes was an idea proposed by the JFSA and agreed by POL.

c. The Branch User Forum created a formal structure for SPMRs to raise concerns directly with POL management.

164. Ms Vennells submits that the proposed measures constituted a reasonable response to the SSIR and the position as she understood it to be.

165. In his witness statement[51], Mr Kevin Gilliland refers to a number of documents which show that Ms Vennells is not and was not indifferent or resistant to change:

a. (**POL00099179**) On 11 July 2013, Ms Vennells received an email and an attached note from a Scottish SPM, David Woodrow, who said he had been suspended for retaining £2,000 in lieu of a rates issue which was specific to Scotland, and which was partly due to poor support for SPMs from POL. Ms Vennells forwarded the email to Mr Gilliland and Ms Crichton (cc. Mr Davies and Mr Edwards) on 12 July 2013 and asked them to read the SPM's email and the note. It is worth quoting Ms Vennells' reaction to the SPM's complaint:

> "To be very clear, I am not saying we should abandon disciplinary action. But his note repeats some of what we hear in the SS review: an overbearing/impersonal process, one that is not proportionate to the record or the case in hand, and one that penalises the cashflow/costs of a small business less able to bear those in the short-term. In a case like this, perhaps a formal written warning might have been better as an initial stake in the ground, while we explored the issues – it would be more understanding of Spmr colleagues situations, it would diffuse any angst on the part of PO colleagues trying to understand the confusion, and certainly would be less costly for us: the cost of public funds deployed [sic] this case already outweighs the cost of the error/missing funds which if I have understood correctly are/will not be missing.

[51] (**WITN10040100**)

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> I would like an answer by this pm as to whether there is any good reason why we cannot just clear this up now. This is a chance for us to move at pace, email Mr Woodrow and the MPs and show that the new PO has common sense and can act quickly but not ignore the risks to the business."

b. The email chain at (**POL00145419**) shows that Ms Vennells spoke to Mr Woodrow by telephone on 12 July 2013 and arranged for him to speak to Ms Crichton and Mr Gilliland. Mr Gilliland states in his witness statement (**WITN10040100**) at ¶133 that Mr Woodrow's case led to an increase in the financial threshold for suspensions, and increased oversight and involvement by more senior managers in suspension decisions.

c. At ¶¶134-138 of his witness statement, Mr Gilliland discusses the Branch Support Programme, which was established in in July 2013 with terms of reference to "understand the current business processes, operational procedures and ways of working which are in place to support branches, identify the gaps and produce recommendations to rectify the issues" (**POL00089711**). The Branch Support Programme was renamed the Business Improvement Programme in 2014 and given an expanded mandate "to ensure that the required cultural change was to be embedded within the business as usual with the Post Office." (**POL00148920**).

d. The scope of the work of the Business Improvement Programme can be seen from the programme update paper dated 25 June 2014 at (**POL00407939**). This included: (a) reforms to disciplinary procedures; (b) new training systems; (c) the Branch Support Team had begun proactively to call branches which called the NBSC helpline most often to understand what extra support could be offered and whether changes needed to be made to training; (d) calls to the NBSC had been reviewed to identify the areas which accounted for the most calls and a root cause analysis would be conducted; and (e) changes to Horizon transaction procedures. The programme had obtained c. £8.6 million in funding to invest in areas including SPM recruitment, training, and IT.

The protection of POL's reputation

166. Ms Vennells submits that the protection of a company's reputation is a legitimate objective of a CEO. It is clear from the documents that Ms Vennells saw no conflict

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between the protection of POL's reputation and positive engagement with the SSIR. As she informed the Board in an email on 4 July 2013 (**POL00099016**):

> "To summarise very briefly, we have taken the view that the best way to minimise the reputational risks associated with the review and to do the right thing for the business and the people is to welcome the broad thrust of the report and commit to acting on its key findings in relation to the need for improvements in our support and training processes. This is entirely consistent with the broader imperative for cultural change across the organisation which the Board has discussed in recent months."

167. Accordingly, Ms Vennells saw the implementation of the SSIR's recommendations on support and training as the primary means of preserving POL's reputation. In circumstances where Ms Vennells was being told that the Horizon IT system was reliable, but there were areas for improvement in training, support, and culture, it is understandable why she took the approach that she did - to emphasise POL's confidence in the IT system while accepting that it should proactively identify and improve culture, training, and support.

Royal Mail Prospectus

168. During her oral evidence on 24 May 2024, Ms Vennells was asked about her role in 2013 in seeking the removal of a section on Horizon and the SSIR from the IT risks section of the Royal Mail share prospectus. Ms Vennells' evidence was that there were two reasons to ask for this section to be removed. First, POL and Royal Mail were now separate businesses and the prospectus was about Royal Mail. Second, there was "the challenge of managing potential misinterpretation in the media of facts that were not always necessarily understood": **24 May 2024 33:4-33:17** (**INQ00001153**).

169. The documents show that these were indeed Ms Vennells' concerns:

    a. On 20 September 2013, Ms Vennells emailed Jon Millidge, the company secretary of Royal Mail (**POL00146462**) and set out the then current draft of the prospectus language referring to Horizon: "In July 2013, an interim report was published into alleged problems with POL's "Horizon" computer system, which is used to record transactions in its branch network. The report confirms that no system wide problems had been found in relation to the "Horizon" software, but suggests that

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POL should examine its training and support processes for sub-postmasters." Ms Vennells then stated:

> "Our challenge is that this is not a risk to RM and is particularly misleading in the IT risks section. As your para states, the findings of the interim report related to Spmr training and support not IT faults. Can you get this para removed?...So sorry to bother you with this. And I recognise that the para makes it clear that there isn't an IT fault. But its presence in an IT risk section potentially opens up a sensitive and politically high profile situation."

b. Mr Millidge replied on the same day stating that he thought the risk only repeated the contents of a press release, i.e. POL's press release when it published the SSIR. Ms Vennells replied that, while that was correct it was "just odd therefore that it features in an IT risk section" (**POL00146462**).

c. When Mr Millidge suggested that it could be mentioned under a section on contracts, Ms Vennells stated that it was not a Royal Mail "contract risk" either and reiterated that it should be removed altogether (**POL00146462**).

170. There are two clear messages in Ms Vennells' emails. The first was that Horizon and the SSIR was not a Royal Mail risk at all. That was also the view of Mr Edwards, who was also involved in seeking changes to the prospectus: **26 July 2024 134:9-135:12** (**INQ00001182**). Second, as Ms Vennells has stated in her first witness statement at ¶460, she was concerned that public and network confidence in Horizon would be undermined if media reports and public statements failed to distinguish between Second Sight's findings about the Horizon software and their findings about training and support. It is clear that she was concerned that the inclusion of the SSIR as an "IT risk" did not accurately reflect the findings of the SSIR.

BEDs and remote access issues during the Second Sight review (2012-2013)

171. There were two significant developments in relation to BEDs and remote access in 2013:

a. Ms Vennells became aware for the first time of two bugs in HNGX (the Receipts and Payments Mismatch bug and the Suspense bug) and the Callendar Square/Falkirk bug in Legacy Horizon.

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b. Second Sight and POL considered the case of Michael Rudkin, which raised issues of remote access.

Bugs in HNGX and Legacy Horizon

172. Ms Vennells believes that she became aware of the Receipts and Payments Mismatch bug (which impacted 62 branches in 2010) and the Suspense Account bug (which impacted 14 branches in 2012 and 2013) between 9 and 16 May 2013. This is supported by the evidence.

173. The Local Suspense bug was diagnosed by Fujitsu in February 2013. The first person who was liaising with Ms Vennells about the Second Sight review to be told about the bug appears to have been Mr Baker, who was sent two summaries of the bug by Mr Winn on 9 May 2013 (**POL00098186**); (**POL00098185**). Mr Baker (who was not involved when the bug was detected in 2010) knew about the Receipts and Payments Mismatch bug shortly before 16 May 2013, when Mr Jenkins emailed him a note about the bug in advance of "tomorrow's meeting with Lesley" (**POL00098283**).

174. On the same day, Ms Lyons prepared a speaking note for Ms Vennells to talk to Ms Perkins about the discovery of bugs in Horizon (**POL00029587**). While Ms Vennells cannot recall precisely when or how she was told about the bugs in HNGX, this sequence of events makes it highly likely that she was told about them at some point between 9 May and 16 May 2013.

175. Ms Vennells addresses the key themes relating to the bugs below.

Communication of the bugs to Second Sight

176. It is clear, contrary to suggestions made during the Inquiry, that POL did not conceal the bugs from Second Sight. The evidence shows that it was Mr Baker of POL, and not Mr Jenkins of Fujitsu, who first informed Second Sight that two bugs had been detected in HNGX:

a. On 19 June 2013, Mr Warmington of Second Sight emailed Mr Baker with the subject "Defects in Horizon" (**POL00178034**).

> "Simon: you mentioned to me, about three weeks ago, two system defects or bugs. You said they had affected about 64 SPMRs as I recall. One had led to

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> a£9,000 or so shortfall that had to be investigated by Andy Winn and, as I understand you to say, that amount had been written off and then later discovered to have been caused by the defect/bug.
>
> Now here's the point: Ian and I agree that those two defects need to be mentioned in the Interim Report. POL is going to have to disclose them.
>
> What we will need therefore is a short, clear, report on what happened. We will need to cover the matter in the Interim Report and the July 8th meeting."

b. The first line of Mr Warmington's email dates the initial conversation with Mr Baker about the bugs to late May or early June 2013 – only about three weeks after Mr Baker became aware of the Local Suspense Bug on 9 May 2013. The obvious inference from the email is that Mr Warmington was told about the bugs for the first time during this conversation.

c. On 21 June 2013, Mr Baker emailed Mr Warmington and Mr Henderson (cc. Ms Sewell, Ms Lyons and Ms Crichton) attaching (a) a zip file with documents relating to the Receipts and Payments Mismatch bug; and (b) a note by Mr Jenkins on the Local Suspense bug (**POL00130321**).

d. Mr Henderson's oral evidence on **18 June 2024 107:22-108:13** (**INQ00001162**) was that the information about the bugs in the SSIR was disclosed by Mr Baker and that Second Sight were previously unaware of the bugs:

> A. I do recall that, shortly before we published our Interim Report, Simon Baker, again on behalf of Post Office, did disclose some late information to us that --of certainly two, if not three, types of bug that were previously unaware of.
>
> SIR WYN WILLIAMS: Was that disclosure by Mr Baker done orally or did he send you a document setting it out, so to speak?
>
> A. He sent us -- I mean, it was both. We had a lot of telephone contact with him but he also disclosed those documents to us and we referred to them in our report.

e. It is also Mr Baker's evidence that he informed Second Sight about the bugs: see paragraph 86 of his witness statement.

f. In addition to the two bugs in HNGX, POL informed Second Sight about the Falkirk bug in Legacy Horizon. The email chain between Second Sight and Simon

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Baker at (**POL00144918**) indicates that Mr Baker informed Second Sight about the bug on or around 28 June 2013. The email in the chain from Ron Warmington to Mr Baker at 17:26 on 28 June 2013 shows that Second Sight had been given a copy of one of Mr Jenkins' witness statements from the Misra criminal case.

177. The statements by POL managers to Ms Vennells that POL had disclosed the bugs to Second Sight, as set out in Ms Vennells' statement (at PV WS1 ¶373) (**WITN01020100**) were not, therefore, chicanery. They were correct.

Communication of the bugs to Lord Arbuthnot and Ms Lyons' email dated 23 May 2013

178. Ms Vennells decided to discuss the bugs with Lord Arbuthnot in person. As she explains in PV WS1 ¶390 (**WITN01020100**), she felt that if the bugs were not explained clearly, there was a risk that people might draw conclusions about their significance for the reliability of the system which she and POL did not consider justified. She raised the bugs with him for the first time on 3 July 2013, at their first face-to-face meeting after Ms Vennells became aware of them in mid-May.

179. Ms Vennells was scheduled to speak to Lord Arbuthnot in a call on 23 May 2013 and was sent briefing notes on 20 and 22 May 2013.[52] On the day of the call, Ms Lyons emailed Ms Vennells (cc. Ms Crichton, Mr, and Mr Davies) (**POL00105632**) stating:

> "Paula the only things that is not in the brief for James is our move away from 'there are no bugs in Horizon' to 'there are known bugs in every computer system this size by they are found and put right and no subpostmaster is disadvantaged by them' it would be good to be able to go on and say 'or has been wrongly suspended or prosecuted'.
>
> I do not think that is a phone call conversation but needs to be aired at some time with James, I would suggest at your meeting."

180. Ms Vennells makes the following points in relation to the email:

    a. The final sentence of the email ("I do not think that is a phone call…") makes clear Ms Lyons was not suggesting that Ms Vennells should raise the bugs with Lord

[52] PV WS1 (**WITN01020100**) ¶¶381-383.

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Arbuthnot on the call on 23 May 2013. Ms Lyons anticipated that Ms Vennells would discuss the bugs with Lord Arbuthnot at a meeting.

b. Ms Vennells did not believe that the move away from "there are no bugs in Horizon" was an attempt to pre-empt findings about the bugs in the SSIR: **23 May 2024 100:4-100:18** (**INQ00001152**).

c. Ms Vennells has no recollection of what Ms Lyons characterised as a "move away from 'there are no bugs in Horizon'" being discussed as a line to take in communications, but simply as recognition of the reality that bugs had now been found in the system and that any statements to the contrary should be corrected: **23 May 2024 101:1-101:15** (**INQ00001152**).

Communication of the bugs to Ms Perkins and the Board

181. There should also be no suggestion that Ms Vennells attempted to conceal or delay in revealing the bugs to Ms Perkins and the Board.

182. Ms Perkins appeared to assent when it was put to her by CTI that she was not informed about the bugs until around 3 July 2013: **6 June 2024 103:11-105:5** (**INQ00001157**). However, the email chain at (**POL00098797**) shows that Ms Perkins was already familiar with the bugs by 28 June 2013:

a. In the first email in the chain, at 13:12 on 28 June 2013, Alwen Lyons emailed Ms Vennells a bullet point list of next steps on the Horizon issues. The first bullet point was that Mr Ismay and Ms Sewell were working "on the details of the two bugs, to understand them and then get them into language that was clear and could be communicated".

b. Ms Vennells forwarded Ms Lyons' email to Ms Perkins at 13:14: "You will see below Alwen's proposed next steps. It covers all the ground at present."

c. Ms Perkins replied to Ms Vennells at 14:50: "Thanks for the updates. I am glad we have the best people on this." Ms Perkins' reference to the "best people" clearly refers to the individuals identified in Ms Lyons' email who were working on the next steps.

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183. Clearly, Ms Perkins did not learn about the bugs for the first time by reading Ms Lyons' email. The obvious inference from the fact that Ms Vennells forwarded Mr Lyons' message to Ms Perkins without any explanation of "the bugs" is that no explanation was needed because Ms Perkins already knew about them. Similarly, Ms Perkins' reply to Ms Vennells contains no surprise or alarm at the mention of "the bugs" and she does not ask for information about them. The email chain suggests that Ms Perkins had been given details about the bugs prior to 28 June 2013.[53]

184. It is plausible that Ms Perkins was informed about the bugs on 16 May 2013. On 16 May 2013 at 7:48, Ms Vennells emailed Ms Perkins that "one other issue arose overnight, which I may need to brief you on over the next couple of days, so will try to get a phone slot" (**POL00098278**). Ms Perkins replied at 8:17 that she was unexpectedly free that afternoon. At 13:05, Ms Lyons emailed herself the text of a speaking note for Ms Vennells to use "for your call with Alice this afternoon" which referred to instances "coming to light where there is evidence that there are bugs in Horizon" (**POL00029587**). In PV WS1 ¶360 (**WITN01020100**), Ms Vennells mistakenly described (**POL00029587**) as an email to her from Ms Lyons, and there is no evidence that the note was sent to Ms Vennells in electronic form. However, the evidence of preparations to tell Ms Perkins about the bugs makes 16 May 2013 a plausible date on which Ms Perkins was informed of their existence.

185. Ms Vennells informed the Board about the two bugs in HNGX during a Board call on 1 July 2013. The minutes (**POL00021515**) record that Ms Vennells stated as follows as part of an update about the SSIR:

> "The CEO explained that the Horizon, like any large computer system, would occasionally have anomalies and two were know[n] of over recent years. The Business has dealt with these anomalies to ensure no sub postmaster was out of pocket and these anomalies had not affected any of the cases which Second Sight had reviewed. Second Sight had been told of these anomalies and they would include them in their report."

186. The timing of the update to the Board is addressed in the section on the SSIR. It has been noted that Ms Vennells' update mentioned only two anomalies in the update. The reason

[53] Ms Lyons stated that there was a conversation with Ms Perkins about the bugs "before the [SSIR]" but she could not remember the date: **21 May 2024 78:18-78:22** (**INQ00001150**).

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for this is that Ms Vennells had not been told about the Falkirk bug prior to the Board call:

a. At 15:58 on 1 July 2013, Mr Edwards emailed a speaking note for the Board to Ms Perkins, (cc. Ms Vennells, Ms Lyons, Ms Crichton and others) (**POL00189739**). The speaking note (**POL00098878**) mentioned that POL had disclosed two anomalies in Horizon to Second Sight.

b. At 19:48 on 1 July 2013, Mr Williams emailed Ms Lyons and Ms Crichton a draft of a briefing note for Ms Vennells on the SSIR: Covering email at (**POL00029626**); briefing note at (**POL00029625**). The briefing note contained a section on the "Falkirk Anomaly", which "was resolved in March 2006 and is therefore a different anomaly to either the 14 Branch or the 62 Branch Anomaly."

c. Ms Lyons replied at 20:07, stating "this is the first I've heard that Falkirk is different to the 64 we had assumed it was the same so do we have 3 anomalies. That's not good we have told the Board and Janet 2 we knew of!" (**POL00029626**).

d. The briefing for the Board call had therefore been prepared on the erroneous basis that the Callender Square/Falkirk bug and the Receipts and Payments Mismatch bug were one and the same bug. Ms Lyons only realised this after the Board call.

187. There is no evidence that Ms Lyons took any active steps to correct the Board's, Ms Perkins' and Ms Vennells' understanding that only two bugs had been detected in Horizon. The first document that was sent to Ms Vennells or Ms Perkins which referred to the Falkirk bug was the briefing note on the SSIR (**POL00113369**). This document was emailed to Ms Vennells and Ms Perkins by Mr Edwards at around 2 a.m. on 3 July 2013 in advance of their meeting with Lord Arbuthnot at 9 am at Portcullis House (**POL00115923**). Mr Edwards also attached to the email a speaking note for the meeting (**POL00115924**). Ms Vennells does not remember whether she noticed that while the speaking note referred to two bugs, the briefing note identified three. She also does not recall whether she mentioned the Falkirk bug to Lord Arbuthnot during the meeting.[54]

[54] PV WS1 ¶433 (**WITN01020100**)

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188. If she did not mention the Falkirk bug, it was not deliberate.[55] It would have been futile to attempt to conceal the bug. It had been known to Second Sight since June 2013, and it was mentioned, though not by name, in paragraph 6.10 of the SSIR (**POL00029650**).

Use of the terms "exceptions" and anomalies"

189. Ms Vennells accepts that it was a mistake by POL and by Ms Vennells personally to have called bugs "exceptions" or "anomalies". They were bugs and should have been referred to as such.

190. Ms Vennells explained that she and others at POL were trying to find a non or less emotive word than "bug" to describe what she understood at the time to be two rare occurrences with limited impact and which she believed had been resolved without any loss to the affected SPMs. Ms Vennells accepts that this was a mistake: **23 May 2024 192:19-196:10** (**INQ00001152**).

Ms Vennells' understanding of the bugs

191. Ms Vennells was not an IT specialist and relied on POL's IT specialists for information about the bugs and their implications for the reliability of the system. Two IT specialists reported to Ms Vennells at the relevant time: Ms Sewell and Mr Baker. It is important to identify what Ms Sewell and Mr Baker thought and said about the bugs at the relevant time:

    a. Ms Sewell stated in her witness statement that the first software fault she was aware of was the Receipts and Payments Mismatch bug. She also had a clear recollection of the Local Suspense bug, which she became aware of in June 2013: Sewell WS ¶17 (**WITN00840100**); **16 May 2024 66:7-66:10** (**INQ00001148**). These appear to have been the only bugs or defects in HNGX which, to Ms Sewell's knowledge, had impacted branch accounts. Paragraph 86 of Mr Baker's witness statement indicates that the only bugs he was aware of were the three mentioned in the SSIR.

    b. Ms Sewell stated that her view as an IT professional is that "there are faults in any computer systems and its important how you deal with them." **16 May 2024 71:9-71:13** (**INQ00001148**). While Ms Sewell acknowledged in her oral evidence that

[55] PV WS1 ¶434 (**WITN01020100**)

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"it wasn't good" that the Local Suspense bug was diagnosed as a system defect a year after a SPM had first reported a discrepancy to POL, she said her main concern at the time "would have been to ensure that the branch was not disadvantaged, which they weren't." **16 May 2024: 66:13-66:19** (**INQ00001148**).

c. Similarly, Mr Baker's evidence is that he did not understand why Second Sight viewed the BEDs detailed in the SSIR as a problem, given that they were contained to a small number of branches and had been resolved: WS ¶86 (**WITN04730100**). Writing to Mr Warmington about the Local Suspense bug on 21 June 2013 (**POL00130321**), Mr Baker said:

> "To me the important point is that the incidents were detected, resolved, and we communicated the problem to sub postmasters. The other reassuring thing to me is that before we understood there was a defect, our support people took the view to write off the losses (in the cases where there were losses) as they didn't have any concrete evidence that the branch had done anything wrong."

d. In paragraph 73 of his witness statement, Mr Baker said that in early 2013, he believed it was unlikely that the IT defects in Horizon were severe or widespread enough to account for the cash shortfalls in the branches and that, since he was then managing the POL test team, he had confidence in the thoroughness of POL's testing process. He does not suggest in his witness statement that his work on the Second Sight review caused him to change this opinion.

e. On 28 June and 2 July 2013, Ms Sewell sent Ms Vennells updates on the steps POL and Fujitsu had taken to address the Local Suspense bug (**POL00190016**). These included: (a) Fujitsu had interrogated Local Suspense data and had found only 14 cases of the bug; (b) a system change was planned for 8 October to monitor local accounts for data which should have been deleted; and (c) letters to the affected SPMs were under review by POL legal and P&BA.

f. Ms Sewell's updates gave the impression that the Local Suspense bug had been identified without difficulty through POL's standard procedures:

   i. The timeline for the bug in Ms Sewell's 28 June 2013 update was that the issue was first raised to the NBSC on 25 February 2013, diagnosed by Fujitsu

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on 28 February 2013, and that Fujitsu provided details of the affected accounts on 25 March 2013.

ii. Ms Sewell's 2 July 2013 update stated that: "A problem was identified by P&BA earlier this year due to aged items in the Local Suspense, this was further supported by the two large amounts detailed below that had been raised by the SPMR. At this point P&BA raised through their usual process to Fujitsu as detailed below for investigation".

g. A number of other documents to which Ms Sewell contributed asserted that both bugs had been identified by POL or the Horizon system and that the existence of the bugs should not undermine confidence in the system. For example:

i. Ms Sewell accepted that when she provided comments on a draft POL press statement about the bugs (**POL00189881**) she did not correct an assertion in the draft that they "were picked up by the Horizon system": **16 May 2024 80:14-82:23** (**INQ00001148**).

ii. (**POL00029652**) is an email by Ruth Barker containing the text of a Q&A about the bugs. Ms Barker stated that she had run the Q&A past Ms Sewell, who was happy with it. The Q&A contained the following statements:

i. That, "with a system the scale of Horizon, processing over 6 million transactions a day, it is not material that these anomalies have occurred. What is important is that we have systems in place to identify and rectify them and have ensured that these instances were communicated to the subpostmasters involved. We have been fully transparent in informing the sub postmasters involved and in volunteering this information to be part of the independent review."

ii. That "both of these anomalies were found by [POL] and voluntarily communicated to [Second Sight]. Modifications were made to rectify these issues and all sub postmasters involved have been informed of this…none of the subpostmasters involved have been prosecuted, nor did this lead to any financial disadvantage for them."

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iii. As regards the delay in diagnosing the Local Suspense bug "The important thing is that the 14 transactions involved in this anomaly were identified and rectified and that the subpostmasters involved were informed. We have been fully transparent in informing the subpostmasters and in volunteering this information to be part of the review."

iii. Ms Sewell contributed to the briefing note on the SSIR which was emailed to Ms Vennells and Ms Perkins on 3 July 2013 (**POL00113369**).[56] This was the first document sent to Ms Vennells, or Ms Perkins, in which POL acknowledged that that it had taken a year to diagnose the Local Suspense problem after its first occurrence in 2012: see paragraph 20 (i). However, this was presented as a delay in diagnosing the root cause of a problem that POL was aware of from 2012. It gave no impression that POL had failed to escalate the problem to Fujitsu when its symptoms were reported by SPMs in January 2012, or that POL did nothing to investigate the root ca use of the symptoms until the bug reoccurred in January 2013.

iv. The briefing note went on to state that the two bugs in HNGX "were found by [POL] and voluntarily communicated to SS" and set out the following headline messages about them:

"a. We found the anomalies and, so as to be completely open, told SS (i.e. SS didn't find them).

b. The anomalies were detected, resolved, and we communicated the problem to sub postmasters.

c. No [POL] prosecutions relate to these bugs.

d. say we have addressed the problem (but acknowledge it has taken time)."

v. Similarly, Ms Vennells' and Ms Perkins' speaking note for the meeting with Lord Arbuthnot on 3 July 2013 (**POL00115924**) stated that the "key point to note is that in both cases our processes picked up these issues, appropriate

[56] Ms Sewell confirmed her involvement on **16 May 2024 69:3-69:4 (INQ00001148).**

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remedial action has been taken and they did not lead to any disciplinary proceedings against the affected spmrs."

192. Ms Vennells said that she relied on and was reassured by what she was told about the bugs.[57] She submits that she relied, explicitly or implicitly, on the POL IT team, through the interface of Mr Baker and Ms Sewell, in four main respects: (1) to obtain and inform her of facts in relation to the bugs; (2) to provide their opinion on the significance of the bugs to the reliability of the Horizon system; (3) to inform her of any other bugs or defects of which they were aware which had impacted SPMs; and (4) to inform her if, in their opinion, POL should carry out further investigations into whether there were or could be other problems.

193. As to these four issues:

a. Ms Vennells was told that the bugs were detected by POL processes, that the underlying technical problems were diagnosed and fixed, that POL had been transparent with the affected SPMs, and that no SPM had been left out of pocket.

b. Ms Vennells was told by POL's IT function that the bugs were normal occurrences in a system the size of Horizon and did not indicate other or wider problems. What was important was how POL had dealt with the bugs.

c. The messaging given to Ms Vennells was obviously premised on the two bugs being the only bugs in HNGX which had impacted SPMs of which POL IT was aware.

d. POL IT did not recommend a further investigation of possible defects in the system.

194. There is nothing to suggest that Mr Baker or Ms Sewell (who gave oral evidence) deliberately withheld information from Ms Vennells or gave her anything other than their honest opinions about the bugs. Furthermore, there is a reason why Ms Vennells did not commission an investigation of the system in July 2013. Ms Perkins and Ms Vennells were given the same briefing on the SSIR and the same speaking note for the meeting with Lord Arburthnot on 3 July 2013 (**POL00115924**); (**POL00113369**). When Ms

[57] PV WS1 ¶366-367 (**WITN01020100**); See also **23 May 2024. 101:22-102:16; 103:3-103:12** (**INQ00001152**).

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Perkins was asked whether it was a logical question for POL to ask whether there were other discovered bugs, she answered:

> "I think the impression that we were being given by the executives was that they had, in fact -- that their processes had -- well, it says this here -- their processes had identified these cases, in other words, these were things that had been found within the Post Office system and, therefore, that was of -- it was of comfort that those had been found -- that we were being told that those had been found by the Post Office." **5 June 2024: 107:16-107:23** (**INQ00001156**).

195. At the time, the bugs were presented to Ms Vennells and to Ms Perkins not as reasons to be concerned about the system, but as reasons to be reassured.

Michael Rudkin and remote access

196. One of the 4 "spot reviews" attached to the SSIR concerned the case of Michael Rudkin. Mr Rudkin gave Second Sight an account of his visit on 19 August 2008 to Fujitsu's facility in Bracknell. According to Mr Rudkin, he was shown into a basement room containing Horizon terminals identical to those used in every branch in the POL network. He met an individual in the basement "who demonstrated an ability to pass transactions directly into the Horizon system and in so doing to alter, in real time or overnight, the record holdings of Foreign Currency in POL Branch Offices". Mr Rudkin also stated that this person, after altering a branch's cash balance remotely, had made light of it, saying: "I'd better reverse that entry now or he'll have a cash shortage tonight".

197. POL's position on Mr Rudkin's case as of 3 July 2013 was explained in the briefing on the SSIR which Ms Vennells received that day (**POL00113369**). In summary:

    a. Fujitsu had been unable to verify that Mr Rudkin had visited its Bracknell facility on 19 August 2008. Fujitsu had attempted to retrieve the visitor logs to the Bracknell facility for 19 August 2008 but had found that these records had not been retained. Fujitsu had also interrogated emails, documents, and archived information but had been unable to establish Mr Rudkin's visit.

    b. It had been determined that, in August 2008, the basement of the Bracknell facility contained a test environment that was not physically or technologically connected to the live environment. It was therefore impossible for anyone in the basement to adjust live transaction records.

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198. The matter developed further between 3 July 2013 and the publication of the SSIR on 8 July 2013:

a. On 1 July 2013, Second Sight informed POL that Mr Rudkin had found an email dated 1 August 2008 from Martin Rolfe (a POL test analyst) which confirmed that Mr Rudkin was to visit the Bracknell facility that day (**POL00060580**).[58]

b. POL contacted Mr Rolfe. He confirmed that that the basement of the Bracknell facility was a secure test environment where transaction methods were developed and tested. The terminals that Mr Rudkin may have seen were used for test purposes only and had never been connected to any live transaction data or used to alter branch data remotely. Mr Rolfe also denied that he would even have pretended to change branch data, assuming that he was the person who had shown Mr Rudkin the test room. His explanations were set out in a draft witness statement, which was sent to Second Sight by Mr Baker on 1 August 2013 (**POL00216036**) and again on 6 August 2013 after the correction of a typo (**POL00193230**). It is likely that the version sent to Second Sight on 6 August 2013 was the version in disclosure at (**POL00060625**), (**POL00110541**) and (**WBON0000920**), since this version does not contain the "double negative" typo referred to in Mr Baker's email dated 6 August 2013 (**POL00193230**).

c. POL received the final and signed version of the SSIR on 7 July 2013 (**POL00099101**). The concluding paragraph of Spot Review 4 on the Rudkin case concluded that Second Sight was left with a conflict of evidence "and our enquiries are continuing, particularly in the light of the new information confirming that the meeting on 19th August 2008 did in fact occur".

d. At 20:47 on 7 July 2013, Ms Sewell emailed her comments on the SSIR to Ms Vennells and others (**POL00099088**):

> "Rudkin: we and Fujitsu have provided evidence to SS that there was only Testing systems in the basement in 2008. The equipment (hardware) and the testing system were located in the basement. This has been a constant challenge with SS as they contest that Rudkin has signed an affidavit and therefore there is a conflict of evidence. There appears to be a lack of willingness to accept the detail we have provided. We have also had the tester who Rudkin believes took

[58] The email from Mr Rolfe is at (**POL00021699**).

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> him to the basement complete a witness statement. He has confirmed that there was only a testing system in the basement. This has been a constant challenge with SS and I'm not sure how this will get resolved."

199. Accordingly, the message that was communicated to Ms Vennells in the documents was that Mr Rudkin's allegations had been investigated, and that POL was satisfied that they had no substance.

200. However, the evidence of Mr Warmington of Second Sight and Mr Baker raises an issue of whether Ms Vennells was given any further information that is not recorded in the documents. As set out below, the evidence is that she was not.

201. Mr Henderson says in his witness statement that, in September 2012, he visited Fujitsu's facility in Bracknell and met Gareth Jenkins. Mr Jenkins told him that Fujitsu "routinely used remote access branch terminals for various purposes", including collecting log files, and that members of his team could generate keystrokes that were indistinguishable from a SPM accessing a terminal directly: Henderson WS ¶¶43-44 (**WITN00420100**). Mr Henderson says that he shared the information he had received from Mr Jenkins with Ms Lyons and Ms Sewell, who told him very firmly that he was mistaken: Henderson WS ¶46 (**WITN00420100**).

202. However:

a. In paragraph 2.2 of his witness statement for the Group Litigation (**FUJ00160042**), Mr Henderson gave a different and less detailed account of the meeting with Mr Jenkins in September 2012:

> "At the meeting on 13 September 2012, one of the matters discussed in the meeting was remote access to terminal located in branches. Gareth Jenkins confirmed to me that this capability existed and was occasionally used to troubleshoot problems in the branch."

b. In his oral evidence, Mr Henderson added the detail not found in either his witness statement for the Group Litigation or his witness statement for the Inquiry, that Mr Jenkins also told him that remote access took place out of hours and that Mr Jenkins would often ask SPMs to leave their terminals switched on overnight to facilitate remote access: **18 June 2024 70:5-70:12** (**INQ00001162**).

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c. At the Inquiry, Mr Henderson was asked whether his witness statement for the Horizon Issues Trial, which talked about the "occasional use" of remote access, or his Inquiry witness statement, which talked about "routine use" was more likely to be accurate.

d. Mr Henderson's answer was that:

> "I think you need to drill into the detail because, on reflection, I realised that Gareth Jenkins was talking about a number of different things. At one level, he was talking about direct access to physical sort of terminals, using things like remote desktop protocol, where he was troubleshooting, it might be hardware failures, connecting to a terminal in a subpostmaster's branch. But I'm also now aware that remote access also extended to include back-end databases, and so on. At the time that both these statements were made, I was probably unaware of that level of detail." **18 June 2024 69:14-69:24** (**INQ00001162**).

203. Mr Henderson appeared to be saying to the Inquiry in this answer that he understood the conversation differently in light of what he had learned about remote access since 2012. Given that there is no contemporaneous record of the conversation, that Mr Henderson's description of it has varied and developed over time, and that - on his own evidence - his understanding of the meaning of what Mr Jenkins said has changed since 2012, Ms Vennells submits that it is difficult to draw a conclusion as to precisely what was said. It is even more difficult to establish what, if anything, Mr Henderson reported about the conversation to Ms Lyons and Ms Sewell. This issue was not discussed with them during their live evidence, and there is no contemporaneous record that Mr Henderson raised remote access with them in September 2013. There is also no evidence that Ms Lyons and Ms Sewell reported any such conversation to Ms Vennells.

204. In paragraphs 30 and 31 of his witness statement (**WITN04730100**), Mr Baker says that, at Second Sight's request, he asked Fujitsu towards the end of 2012 about remote access to HNGX. Mr Baker spoke to Mr Jenkins, who confirmed that Fujitsu could directly and remotely update the SPM database and had good controls in place. Mr Baker claims that he relayed this information first to Second Sight, and then to Ms Vennells at a meeting of the core team working on the Second Sight review. According to Mr Baker, Ms Vennells appeared "surprised by this information, based on her body language, which I found puzzling since direct remote access was possible in any IT system and there must be controls in place. I recall reassuring her that this was a standard feature in IT systems."

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205. It is clear from this that Mr Baker does not claim to have told Ms Vennells that Fujitsu used remote access to make unauthorised changes to branch accounts. In any event, his account is clearly a mis-recollection of events in 2013 in which Ms Vennells was not involved.

206. First, it is highly unlikely that Mr Baker discussed remote access with Second Sight or Gareth Jenkins in 2012. Mr Rudkin first contacted Second Sight about his visit to Bracknell in February 2013.[59] Second Sight notified POL of Mr Rudkin's case and made initial inquiries about remote access on 5 and 6 February 2013.[60] On 20 March 2013, Mr Allchorn emailed Mr Henderson with current action points to obtain documentation about Fujitsu's and POL's Bracknell operations (**POL00029577**). This included a ringfence on the emails of relevant employees since 2008.

207. On 22 May 2013, Mr Baker spoke by telephone to Mr Warmington and Mr Henderson, who recorded part of the call. The transcript is at (**SSL0000103**). It shows that:

    a. Mr Baker said that he asked Fujitsu and "apparently there is a process where – so there is a technical avenue where you can technically do some form of adjustment, you know, and - - but apparently its very carefully monitored, controlled, audited stuff - - type stuff" (page 3).

    b. Mr Baker said that he told Ms Crichton and Ms Lyons that "there is a mechanism and their faces dropped" (page 6). It is highly likely that this is the conversation that Mr Baker has mis-recollected in his witness statement.

    c. Not only had Mr Baker not told Ms Vennells, but he also had no intention of telling her. He stated on page 8: "…I told Alwyn about this and I've said, look, there's a chance you may raise it, so I've left it to her to make that call." He stated on page 9: "I am going to leave that to Alwyn to brief Paula on the Bracknell issue."

    d. After Mr Baker left the call, Mr Warmington stated: "they'd better not hold this from the two top ladies very much longer" (page 11).

[59] See the email from Mr Warmington to Janet Walker (Lord Arbuthnot's Executive Assistant) on 5 February 2013 (**POL00097466**)
[60] See the email chain between Mr Warmington, Mr Ismay and Mr Baker at (**POL00031330**)

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208. On the same day, Second Sight recorded what appears to be a subsequent call with Ms Crichton and Ms Lyons. The transcript is at (**SSL0000104**). The discussion about the Rudkin case begins at page 37. Two key points emerge from the transcript:

    a. Ms Vennells had been informed about Mr Rudkin's allegations, but not the details of it (page 45).

    b. Mr Warmington and Mr Henderson pressed POL to give Ms Vennells a more detailed briefing in advance of a meeting with Lord Arbuthnot on 23 May 2013. The key plank of Second Sight's argument was that, although POL had stated that the basement of the Bracknell facility was the place of work of a POL test team, Second Sight had been given emails which showed the POL employees at Bracknell, in Mr Henderson's words, "getting instructions directly from the Helpdesk saying '"Look, we need this fixed…'" and "the responses going back, 'Yeah, it will be done in the overnight run tonight. We will change the balances or whatever.'" (page 43).

209. There is no evidence that Ms Vennells was given any detailed briefing on the Rudkin case before she spoke to Lord Arbuthnot. In June 2013 Mr Baker analysed the emails on which Second Sight relied to suggest that the POL Bracknell team had been involved in changing branch data. He concluded that the emails did not support Second Sight's belief:

    a. At 16:45 on 25 June 2013, Mr Baker emailed Mr Warmington and Mr Hendeson (cc. Lesley Sewell) as follows (**POL00188991**):

> In summary the emails fall into three categories
>
> 1. The email is referring to POLSAP, not horizon
>
> 2. The email is referring to reference data, this is managed by a different team, with no connection to the test team, apart from the fact that some are based in Bracknell (but a different part of the building)
>
> 3. The email is about testing TCs in the test environment as part of Horizon release 5 which contained changes that required the TC process to be tested.

    b. Mr Baker then forwarded the email to Ms Sewell, adding:

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> "As a heads up Ron mentioned to today that he was going to quote one of the emails in the preliminary report.
>
> "He was going to quote "Although it is rarely done it is possible to journal from branch cash accounts. There are possible P&BA concerns about how this would be perceived and how disputes would be resolved".
>
> I hope I have convinced him otherwise, however he is being unpredictable right now and I can't guarantee where he will end up. This quote is clearly referring to POLSAP and not horizon, he now understands that, but Ian and Ron are still thinking through their position on whether to include it.

210. In conclusion (a) the Rudkin case was the first allegation of remote access which was investigated by POL and reported to Ms Vennells; (b) that allegation was that Mr Rudkin had personally witnessed POL or Fujitsu employees using remote access powers to alter branch accounts; and (c) it was reported to Ms Vennells that the allegation had been investigated and that Mr Rudkin was wrong that he had seen anyone accessing the live system. Ms Vennells was entitled to rely on what she was told.

Ms Vennells' conversation with Duncan Tait

211. Ms Vennells recalls discussing remote access during a meeting with Duncan Tait, then the CEO of Fujitsu Europe and has set out her recollection of the discussion at PV WS1 ¶1299 (**WITN01020100**). Ms Vennells raised Mr Rudkin's allegations with Mr Tait. She recalls:

> "I remember that Duncan was dismissive of Mr. Rudkin's claim that there was live access to the system in the basement at Bracknell. I recall him saying something along the lines that if Mr. Rudkin had seen the live environment, he had remembered it "upside down", because the system was managed by a team working on the sixth floor at Bracknell. I asked Duncan (and I remember feeling slightly embarrassed at my implied lack of trust) if a Fujitsu colleague could alter branch accounts remotely without a SPM knowing. I said I had been told by Lesley Sewell and others that it was not possible and besides, there was no understandable reason why anyone would try to. (The view of the POL team at the time was that the idea of an Fujitsu employee hacking into a SPM account was too fanciful to be true. 'Why would they?' was the phrase used.) Duncan's response was no and we concurred it was an implausible scenario. Why would a Fujitsu colleague try to hack into a branch's accounts? We couldn't find any suitable explanation - there was no way they could benefit financially from such an action. The only possible reason would be a malicious act by a disgruntled employee. Duncan described the core of Horizon like a black box, ie., similar to an aircraft flight recorder; he said that even if someone wanted to, it was not possible to alter or break

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> it. I had heard the black box description before. He described how secure the system was - that even if someone had the motivation, it just wasn't possible - Horizon was like Fort Knox.I found it reassuring that the CEO of Fujitsu confirmed that there was no cause for concern and that the system could not be tampered with."

212. (**FUJ00174662**) suggests that this discussion took place at a meeting between Ms Vennells and Mr Tait on 10 June 2013. The document is Fujitsu's briefing note to Mr Tait for the meeting. Section 6 of the note ("Other points which may arise") mentions an allegation raised during the Second Sight review that "alterations to the branch database holding sub-postmaster balances could be made on Fujitsu premises." It is probable that the discussion recalled by Ms Vennells and Mr Tait occurred at this meeting.

213. In his witness statement at ¶110 (**WITN03570100**), Mr Tait states that:

    a. Ms Vennells asked him at a meeting, though he cannot remember when, "if the system was secure".

    b. Since Ms Vennells had referred, before asking the question, to the sixth floor at Bracknell where the Fujitsu software development team were located, he took her question to be to be whether anyone outside of the Fujitsu's Post Office Account team could physically enter the sixth floor and access the system.

    c. He knew that the sixth floor was physically secured and protected by strong cyber controls. On that basis, he told Ms Vennells that the system was "like Fort Knox".

214. Given the similarities between the two accounts, it is likely that Ms Vennells and Mr Tait are discussing the same conversation in their evidence. Mr Tait was aware of Ms Vennells' recollection of the "Fort Knox" conversation from the letter she sent to the House of Commons BEIS Select Committee in June 2020: see his witness statement at ¶109.

215. Ms Vennells submits that her account should be preferred: (1) POL never faced an allegation that Fujitsu's Bracknell facility was physically insecure: (2) on Mr Tait's own evidence, Ms Vennells asked about the security of "the system", not the building or any particular floor in the building; (3) POL did, however, face an allegation that individuals at Bracknell had been seen making unauthorised changes to branch data and Mr Tait was aware of this allegation from his briefing; (4) it is inherently probable that Ms Vennells raised the security of the system with Mr Tait in the context of allegations of remote

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access; (5) even if Mr Tait understood the question to be directed at physical and cyber security it is understandable that Ms Vennells took him to mean that the system could not be tampered with; (6) as set out in her witness statement Ms Vennells recalls it was Mr Tait who mentioned the sixth floor at Bracknell.

The Mediation Scheme

216. The Mediation Scheme was announced on 26 August 2013 through POL's internal communication channels: see the announcement at page 113 of (**POL00090358**). The structure of the Scheme was as follows:

a. The Scheme was open to former and current SPMs and counter clerks who believed that they had suffered loss or been treated unfairly "as a result of the Horizon system or any associated issues".

b. Applicants registered their complaint by completing a case questionnaire review (or CQR). POL then collated the evidence and produced an investigation report for each case, known as a POIR. The POIRs, and the evidence, were handed to Second Sight to produce a Case Review Report (CRR) for each complaint. The function of a CRR was to identify the areas of common ground and disagreement between POL and the applicant, to set out any findings by Second Sight, and to recommend whether the case was appropriate for mediation. Applicants were given copies of the POIR and the CRR in their case.

c. Second Sight were to produce "thematic" reports which would address in detail common issues raised by multiple applicants.

d. There was a Working Group consisting of Second Sight, the JFSA and POL, with the former Court of Appeal judge Sir Anthony Hooper as Chair. The remit of the Working Group was to (a) determine the eligibility of applicants to participate in the Scheme; (b) exercise oversight and give direction to the investigation; and (c) decide whether individual cases should proceed to a mediation.

e. POL was to bear the full costs of the Mediation Scheme. It would provide a contribution of up to £1,500 plus VAT, for applicants to engage a professional adviser to help them gather documents, complete the CQR, and respond to any

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questions from Second Sight. If an applicant's case progressed to mediation POL would provide up to £1,250 plus VAT of additional funding for the applicant to engage an advisor to help them prepare for the mediation and to support them on the day. POL engaged CEDR to run the mediations.

217. The use of mediation as a procedure for seeking resolution of cases was recommended by Ms Crichton following discussions with Bond Dickinson: see the emails between Ms Crichton and Mr Parsons concerning mediation on 12 July 2013 at (**WBON0000767**) and Ms Vennells; email to Mark Davies (cc. Ms Crichton and Mr Edwards) on 16 July 2013 (**POL00192088**): "Susan and I discussed last evening with one of our experienced external lawyers, and came up with a similar idea of a discussion and resolution Forum, which could be chaired by a professional mediator." The Mediation Scheme reflected POL's commitment, when it published the SSIR, to establish a working group to complete the review of the cases and to investigate the themes identified in the SSIR. Ms Vennells explains at ¶¶608-637 of PV WS1 (**WITN01020100**) the factors which led to the establishment of the Scheme. These included (a) the need to complete the investigation of the cases referred to Second Sight;[61] (b) Ms Vennells' belief that the JFSA should be involved in the review of the cases; [62] and (c) the need not only to investigate but to seek to resolve disputed cases.[63] Although some within POL believed that Second Sight should have no further role in the investigation (**23 May 2024: 71:12-71:17** (**INQ00001152**)) Ms Vennells knew it was necessary for them to remain involved, regardless of the reported criticisms of their work on the SSIR, because they had the support and confidence of the MPs: **23 May 2024 72:4-72:11; 127:1-127:20** (**INQ00001152**).

218. On 19 July 2013, Bond Dickinson prepared a "Mediation proposal" paper (**POL00297858**) which contained, under the heading "Workflow", what is clearly an early outline of what became the Mediation Scheme. On the same day, Mr Baker, Mr Edwards, Ms Vennells, Mr Davies, Ms Crichton, and Ms Vennells attended a meeting to discuss mediation (**POL00117036**). On 22 July 2013, Ms Vennells and Ms Crichton met Second Sight and Lord Arbuthnot to discuss the proposal of mediation. Second Sight and

[61] Referred to in paragraph 3 of the 26 July 2013 Update on the work programme arising from the [SSIR] (**POL00006590**).
[62] PV WS1 ¶619 (**WITN01020100**)
[63] PV WS1 ¶628 (**WITN01020100**)

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Lord Arbuthnot both supported the proposal (see pages 2-3 of the transcript of the call at (**SSL0000108**) and Ms Lyons' note of the meeting at (**POL00099354**). POL also presented the proposal to the JFSA: see Ms Crichton's WS ¶135 (**WITN00220100**). Any suggestion that Ms Vennells attempted to stop the investigation of the existing cases or to prevent new cases coming forward for investigation is incorrect. Ms Vennells specifically stated during the meeting on 22 July 2013, in response to Lord Arbuthnot's comment that "these [the existing cases] are not the only cases", that "No, we understand that, and that's one of the things we were trying to address" and that "…this process could be used, subject to it being successful, for other cases going forward…": (**SSL0000108**). As set out above, the Mediation Scheme was made available to the broadest spectrum of former and current Horizon users.

219. The proposal for mediation was explained to the Board in a paper dated 26 July 2013 (**POL00298004**). As stated in the section on prosecutions, the paper appears to have been written by Mr Edwards, who sent a draft to Ms Crichton for comments. Paragraph 7 of the paper stated that:

> "There are a number of possible outcomes to this resolution process, which will have to be determined on a case by case basis. In some instances we may conclude that we still believe that the [SPM] was at fault, and therefore no specific redress should be offered. In other cases we may acknowledge that there were shortcomings on our side or both sides, and commit to take action to address these as part of the process improvements workstream. And of course there is the clear risk that in some cases the sub-postmaster will argue that financial compensation is appropriate, which again will have to be assessed carefully on a case by case basis. We certainly do not believe that there are grounds for a blanket compensation scheme, and will not be setting up the process with this expectation."

220. The statement that there were no grounds for a "blanket compensation scheme" appears to have come from advice set out in the Bond Dickinson "Mediation proposal" paper (**POL00297858**) that "At present, there is insufficient evidence to justify a blanket compensation scheme for SPMRs. Each case needs to be considered on its individual merits."

221. Further details of the potential claims for compensation were set out in paragraph 25 of the 26 July 2013 paper for the Board. This stated:

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> "The mediator would not be empowered to impose any form of financial settlement, so it would be up to us to consider the most appropriate response, which will have to be determined based on the individual merits of each case. This assessment will need to take into account the risk that the [SPM] could successfully secure compensation through the civil courts, alongside a consideration of what we deem to be our moral responsibilities as a principled business and our exposure to damaging reputational risks. Given the uncertainties, at this stage it is not possible to provide any meaningful estimate of the potential overall costs associated with compensation, although we will be keeping this under close review."

222. These documents give the context to Ms Vennells' email to Ms Crichton on 27 August 2013 (**POL00116218**), to which Ms Vennells was taken in her oral evidence on 23 May 2024. Ms Vennells said that her understanding was that mediation would be a conversation and while compensation could be paid where appropriate, POL was not thinking about large scale compensation and should not set expectations for the Mediation Scheme that it could not meet: **23 May 2024 164:2-164:11** (**INQ00001152**). Ms Vennells' evidence is reflected in the 23 July 2013 paper for the Board. The nuances are clearer in the formal Board update than in Ms Vennells' email, but they reflect the same thinking, namely, that settlement would be approached on a case by case basis, and that POL would need to take care to ensure that any monetary settlements were appropriate.

223. The Board update also highlights that the proper approach to settlement and compensation was necessarily a subject on which POL required legal advice. On 19 November 2013, Mr Aujard presented a paper to the Executive Committee on settlement policy, accompanied by a draft settlement policy prepared by Bond Dickinson (**POL00027506**). Mr Aujard noted at paragraph 4.2 of the paper that the Mediation Scheme would be a success from POL's perspective if "the cost…in terms of financial settlements is not excessive, but proportionate and consistent with the proper use of public money." Ms Vennells submits that this was a legitimate objective of POL . It was based upon what it had been told about the outcome of the Second Sight Review in 2012-2013, namely, that the work carried by Second Sight and by a POL technical team had not revealed any error in Horizon and that where problems had occurred, such as the bugs in HNGX, they had been identified, investigated, and corrected: see the briefing at (**POL00113369**) and the section of these submissions on BEDs.

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224. Bond Dickinson's draft settlement policy set a high bar for settlement. It stated that, in cases in which it was claimed that branch losses were caused by technical defects in the Horizon system or communication failures, POL should require very clear proof (i) of the alleged technical defect and (ii) that the defect was the cause of the applicant's loss.

225. Ms Vennells' understanding at the time was that the investigation of the cases within the Mediation Scheme would identify any BEDs in the system: PV WS1 ¶640 (**WITN01020100**). She was not advised, by Second Sight, POL, or Bond Dickinson, that there was a risk that the methodology of the investigation was insufficient to reveal whether particular shortfalls were caused by BEDs. Mr Aujard has given evidence that he considered the policy to be defensible at the time, given the investigations being undertaken by POL and Second Sight: Aujard WS1 ¶150 (**WITN00030100**).

226. However, at times in his evidence, Mr Aujard attempted to distance himself from POL's approach to settlement: he stated that the principles set out in the Bond Dickinson paper were decided before he became Interim GC and that he could not have changed them: **24 April 2024 173:1-18** (**INQ00001135**). This attitude would have been a dereliction of his duties as GC. It was his function proactively to identify areas of legal risk **24 April 2024 62:18-63:16** (**INQ00001135**). Mr Aujard should have advised the Board if it was his view that the settlement policy was wrong or required further investigation and thought. In any event, when POL did take external legal advice on settlement from Linklaters, it confirmed that POL's approach was legally correct.

Notification of Insurers

227. The minutes of the Board meeting on 16 July 2013 (**POL00027514**) record that the Board was concerned about claims against POL for wrongful conviction and asked the CFO, Mr Day, "to look at the insurance position. He promised a note on this. He was also asked to ensure RMG and the Business' insurers were given notice of the review findings".

228. On 19 July 2013, Alwen Lyons sent an email to the Board (**POL00099330**) which contained an explanation from Mr Day on the insurance position. Mr Day said that POL's insurance broker, Miller, thought that "whilst other insurance policies may be impacted the most likely one is D&O – this has the added complication as it is the only policy we share with RM…." In their replies on 19 July 2013, Ms Vennells (**POL00434013**) and Mr Marnoch (**POL00108034**) stated that Mr Day's explanation did not answer the

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question raised by the Board of whether POL had insurance cover for claims by SPMs. Mr Day replied on 20 July 2013 (**POL00108034**):

> "Sorry if not clear; there are two points - firstly D + O appears to be the policy which would cover this eventuality, and our understanding is the first 25k of any claim is not covered (this is being verified).
>
> Secondly, our broker (Miller) will meet with RM's (JLT) to determine the best way to engage with D + O insurer/s which will enable us to understand the possible impact on this (and possibly other) policy premia going forward.
>
> The subtlety here is that we need to inform existing insurers of a potential new risk (in hand) without 'scaring the horses' into immediately increasing future costs, and this process is made more complex by being a joint policy with RM (the only one that is configured in this way).
>
> Will provide a fuller update when we have established all the facts, next week."

229. It appears that Ms Crichton first contacted Bond Dickinson for assistance in relation to a notification to insurers on 24 July 2013: see her email to Mr Parsons at (**POL00145716**). On 9 September 2013, JLT Speciality Limited gave a notification to POL's D&O insurers by an email accompanied by a note from Bond Dickinson dated 23 August 2013 entitled "Horizon Risks" (**POL00112856**). The email stated that:

> "The notice concerns challenges which have been made to the accounting system used in the post office network to monitor Subpostoffices for any improper behaviour. Indications of problems have led to private prosecutions by the post office against Subpostmasters. A pressure group has been formed, Justice for Subpostmasters Alliance, in which the performance of the Horizon system is called into doubt. The evidence produced by the Horizon system has formed the factual basis of prosecutions against Subpostmasters. A review of the Horizon system was undertaken and whilst recommendations were made for improvements no systemic problems were revealed which would call into question the charges previously made against Subpostmasters. It is of concern to Post Office that the expert evidence of one prosecution witness, Dr Gareth Jenkins of Fujitsu, may have failed to disclose certain problems in the Horizon system potentially relevant to a case. In the event it is discovered that improper prosecution was undertaken the risk exists of [a] claim being made against the Post Office and Directors and Officers for Malicious prosecution, Breach of the Data Protection Act, Defamation/malicious falsehood And Harassment. It is unclear at this time the extent of possible exposure to the insured D & O and would consider this notification to be made out of an excess of caution."

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230. The Bond Dickinson note on "Horizon Risks" contained a section on "Risks to Post Office", the first of which was "Prosecutions and Convictions":

> "As noted above, where circumstances warrant, Post Office prosecutes subpostmasters who have acted criminally. The basis of these prosecutions is often found in the transaction records recorded in Horizon. As a result of Second Sight's investigation/Interim Report, Post Office is reviewing all its criminal prosecutions which have had a hearing since 1 January 2010.
>
> Post Office has an obligation to consider whether further disclosure should be made to defendants. It is of concern to Post Office that the expert evidence of one prosecution witness, Dr Gareth Jenkins of Fujitsu, may have failed to disclose certain problems in the Horizon system potentially relevant to a case."

231. On 12 March 2014, Mr Parsons emailed a copy of the "Horizon Risks" document to Mr Aujard and Mr Oliver, and explained: "This note has the dual purpose of advising the board (its contents were later reflected in a board paper) and acting as a notification to POL's insurers – hence why this doesn't look like a traditional piece of legal advice" (**POL00021991**). When she was asked about the Horizon Risks document, Ms Perkins stated that the paper itself was not presented to the Board and that she did not believe that its contents were reflected in any Board paper: **5 June 2024: 178:19-180:4** (**INQ00001156**). In his oral evidence, Mr Parsons stated that he had looked at his 12 March 2014 email and that the sentence that the contents of the "Horizon Risks" document were reflected in a Board paper was incorrect: **13 June 2024 66:9-66:13** (**INQ00001160**). It is not entirely clear that the Board was informed that the DD&O insurers had been notified. The minutes of the Board meeting on 25 September 2013 (which was the first Board meeting after the July Board meeting) record that "The Board asked for a noting paper to clarify if any claims on the Business from Horizon would be covered by Professional Indemnity or Directors & Officers insurance and whether we had alerted our underwriters. The CFO "would ensure the appropriate notifications were made" (**UKGI00016117**).

The Linklaters and Deloitte work in 2014

232. Once applications began to be submitted, POL became concerned by what it called the "Expectations Gap" – meaning the difference between the quantum of some of the claims and the amounts that POL expected to pay in settlement:

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a. Ms Vennells first reported the "Expectations Gap" to the ARC on 19 November 2013 (**POL00021427**), stating that a risk had arisen concerning "the compensation that subpostmasters believed they were entitled to. It had become clear from the applications for mediation that there was an expectation gap which the Business needed to mitigate where possible".

b. Ms Crowe submitted a paper dated 20 February 2014 to the Board to update it on the Mediation Scheme: (**POL00026629_16**). The paper stated that the "expectations gap" was increasing: "Our current estimate is that we will receive claims stated to be in the region of £100M. Applying the settlement policy, Bond Dickinson has estimated the claims to be valued at £6M."

c. At a meeting with Ms Vennells and Mr Aujard on 24 February 2014, Sir Anthony Hooper challenged POL's belief, based on Bond Dickinson's advice, that its financial exposure to dismissed SPMs was limited to 3 months' pay under the SPM contract: (**POL00100338**).

233. In light of these developments, the Board directed POL at its meeting on 26 February 2014 to obtain further legal advice, in addition to the advice that it was receiving on the individual cases. This was to be a piece of "generic legal advice on the overall level of legal and financial exposure (taking account of the possibility of class actions)" (**POL00027337**).

The Linklaters advice

234. POL instructed Linklaters to undertake this work, and they produced a report on 20 March 2014 (**POL00006354**). Paragraph 1.8 of the executive summary stated as follows on the core issue of POL's liability to SPMs:

> "In summary, we think that, absent proof that Horizon is malfunctioning (either generally or in the specific case) the Post Office has a right to recover losses from SPMRs, the SPMRs have no right to compensation for such losses and the circumstances in which there will be a consequential loss claim are limited to those in which inadequate notice of termination was given, will depend on their facts and should be limited. While we are not in a position to assess the facts of the claims in the Scheme and the specific amounts sought in each of them, it appears to us on the basis of the conclusions above that many of the claims are likely to be over-ambitious and difficult to prove. Accordingly, the total amount

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> that could be successfully claimed in Court by Applicants may well be only a fraction of the aggregate amount (approximately £100 million) which they have claimed through the Scheme".

235. The Linklaters report was sent to the Board under cover of a paper from Mr Aujard dated 20 March 2014 (**POL00027431**) in which he summarised the advice as follows: "In preparing their advice Linklaters have, in effect, made the working assumption (which we believe to be correct) that there is nothing 'wrong' with the Horizon system. On that basis, the advice from Linklaters is that, in strict legal terms, many, if not all, of the claims submitted under the Scheme would be unsuccessful if they were considered by a Court".

236. Ms Band, the partner at Linklaters who led the preparation of the advice, attended the Board meeting on 26 February 2014 to explain the advice (**POL00006564**). She explained that, due to the terms of the contract between POL and SPMs, POL would not be required to pay compensation and that if compensation payments were made to Mediation Scheme applicants, this would not give SPMRs outside the Mediation Scheme a right to similar payments. She also explained that English law did not permit claims for distress, as claimed by many applicants.

237. The Linklaters advice appeared to confirm, among other matters, that (1) POL's legal and financial exposure to SPMs within the Mediation Scheme was in line with POL's expectations; (2) POL did not owe SPMs a relevant legal duty of care and the rights and obligations of the parties were limited to the terms of the contract (para. 5.10); (3) the burden was on SPMs to establish that Horizon did not accurately reflect the state of their account with POL (paras. 5.37-5.39); (4) POL had a sound contractual basis to recover losses from SPMs, which was supported, and in any event supplemented, by the laws of agency (para. 5.48); (5) SPMs would not be entitled to consequential losses if POL had claimed sums from them to which it was not entitled (paras. 5.69) and (6) claims based on inadequate training and support would not affect POL's ability to recover losses evidenced by the accounts shown on Horizon (para. 1.7).

238. Linklaters' advice on points of legal principle was shown to be wrong by the decision of Fraser J in the Common Issues Judgment in the Group Litigation. Ms Vennells submits that at the time, she was in no position to look behind or question their opinions on the law. The report was an ostensibly thoughtful and well-rationalised piece of legal advice

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by a top-tier law firm and it was submitted to the Board without any reservation by the GC.

The Deloitte assurance review

239. After Ms Band left the meeting on 26 February 2014, the Board agreed to commission a piece of work, to complement the Linklaters advice, which would give them, and those concerned outside the business, comfort about Horizon. The work should cover: (a) how the system worked; (b) a review of the data integrity aspects of the system; (c) a reference to all tests and audits performed on the system; and (d) a response to the most significant thematic issues raised by Second Sight.

240. On 9 April 2014, POL engaged Deloitte to provide an independent summary of the assurance and other work undertaken in relation to HNGX: see Deloitte's engagement letter at (**POL00117611**). The stated purpose of the engagement was to enable POL to respond more effectively to allegations that Horizon was defective. The scope of the work was a "desktop" review of documents which evidenced the design of the procedures and controls for Horizon. Deloitte were not instructed to test whether Horizon had been implemented or operated as designed, which was a potential second stage of the work.

241. The rationale for the exercise was discussed at the meeting of the Sparrow Sub-Committee on 9 April 2014 which Ms Vennells attended (**POL00006565**):

> "It was noted that Part 1 consisted of a largely desk-based exercise to assess the control framework within which Horizon operates. As part of its business as usual activity Post Office and Fujitsu undertake a range of assessments and audits of Horizon/s operating environment. Deloittes will review those assessments and audits and provide an assessment of the assurance landscape and identify any gaps. The assessment will not consider the integrity of the Horizon processing environment at implementation. That would form Part 2 of the work.
>
> "Although no system could be absolutely bullet proof, no issues had yet been identified through the cases being investigated or any other route that has called into question the integrity of Horizon. Nor have any wide-spread systemic faults been identified since Horizon on-line was implemented. These two points, along with the Part 1 work (depending on the results) should be sufficient to assure Post Office that Horizon is fit for purpose."

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242. Mr Aujard stated in his oral evidence that the section of the discussion on Horizon would have been formulated from contributions from a number of people, including Ms Sewell: **24 April 2024 118:18-118:25** (**INQ00001135**). In any event, Ms Vennells submits that the Sub-Committee would have been entitled to assume that an important statement about Horizon's fitness for purpose, and how it was to be assessed, would represent the professional opinion of POL's IT specialists.[64]

243. Gareth James, a partner of Deloitte, attended the Board meeting on 30 April 2014 to present Deloitte's interim conclusions (**POL00021524**). Mr James reported that all of the work to date showed that HNGX had strong areas of control and that its testing and implementation were in line with best practice. The only major caveat was that Deloitte had yet to assure the controls and access at Fujitsu's financial service centre. It was also agreed that Mr James would produce and cost a proposal to conduct a similar exercise for Legacy Horizon.

244. At the Board meeting, Mr Aujard had explained that several SPMs had made allegations about "phantom" transactions which were non-traceable. At the meeting of the Sparrow Sub-Committee on the same day, which Ms Vennells attended, (**POL00006566**) Mr Aujard stated that he had told Mr James about the visibility of "Transaction Corrections" in the transaction logs, and that Mr James had stated that this should enable Deloitte to complete their assurance work much more quickly.

245. The Board did not see the draft reports prepared by Deloitte in connection with the engagement: Mr Aujard was concerned that they were too long and technical to be presented to the Board. He was unsure whether he had read Deloitte's final draft report in its entirety himself: **24 April 2024 129:5-129:20** (**INQ00001135**). Instead, Deloitte was asked to prepare a shorter document with a summary of their conclusions to go to the Board.

246. This was the Board Briefing document (**POL00030159**) which Ms Lyons sent to the Board on 4 June 2014, as an attachment to an email in which she set out a message from Mr Aujard and Ms Sewell (**POL00029733**). The message from Mr Aujard and Ms Sewell stated that the briefing focused on those features of the Horizon system which operated to provide SPMs with full ownership and visibility of their branch ledger, and which

[64] (**POL00147961**) shows that Ms Sewell had input into the terms of Deloitte's engagement.

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maintained a complete and accurate audit trail. It therefore helped to address allegations by SPMs that branch losses were caused by "phantom" Horizon transactions. Although they noted that the Board Briefing was heavily caveated and the limitations of the "desktop" review were acknowledged, Deloitte's key findings were said in the email to include the following:

a. Deloitte had not become aware of anything to suggest that the system as designed would not deliver the objectives of processing transactions and keeping copies of them in the Audit Store with integrity.

b. Deloitte's review of "extensive operational documentation" identified features in Horizon "which, if implemented, would support the robust operation of the system."

f. Those features would operate to protect transaction data integrity from when it enters the system in a Branch until stored in the Audit Store, and provide visibility to SPMs of any centrally generated (i.e. non-Branch) transactions.

g. Those features were not impacted by the 2010 upgrade to the current day Horizon Online system (and hence were not independently tested at the time).

h. POL had in place key controls over the day to day management of Horizon. These had been independently tested and assured by E&Y since 2012.

247. However, the Board Briefing contained two pieces of information that were not mentioned, or even hinted at, in the message from Mr Aujard and Ms Sewell. These were:

a. Database access privileges existed which would allow a Fujitsu user to delete or amend a digitally signed basket from the Audit Store and to replace it with a fake version. Deloitte had not identified any documented controls to prevent a person with the necessary privilege from doing this.

b. All processes operated on the principle of full Sub-postmaster disclosure and acceptance. An exception to this principle was a procedure known as a "Balancing Transaction". Deloitte reported that Balancing Transactions did not require approval by the SPM and appeared to be an exceptional process which Fujitsu

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asserted had been used only once, in 2010, between 2008 and May 2014. The usage of the function prior to 2008 was unknown.

248. Ms Vennells stated in her written evidence (PV WS1 ¶885) (**WITN01020100**) and oral evidence (on **22 May 2024 161:24-165:15; 168:24-170:18**) (**INQ00001151**) that she spoke to Ms Sewell about Balancing Transactions after she had read the Board Briefing. Ms Vennells recalled that Ms Sewell told her that it was similar to a Transaction Correction, that the procedure had been used on one occasion, and that permission was sought from the SPM. Ms Vennells recalled a second conversation with Ms Sewell to obtain confirmation that POL knew from documents that the procedure had been used only once and she understood that this was correct.

249. Ms Vennells submits that her recollection is likely to be correct. Ms Sewell was one of the authors of the email to the Board which stated in terms that Deloitte's work helped POL in relation to allegations of "phantom transactions". Ms Vennells submits that this is likely to have been Ms Sewell's opinion at the time: it would have been extraordinary for POL's head of IT to state that opinion to the Board if she did not believe it to be true or know that it required a significant qualification.

250. In this context, the Inquiry should treat with caution Ms Sewell's evidence that she was angry upon learning that Fujitsu had used a Balancing Transaction to insert a transaction into branch accounts, and that she immediately escalated the issue to the CEO and the GC: Sewell WS ¶65 (**WITN00840100**). There is no documentary evidence to support this assertion. Deloitte's findings in relation to Balancing Transactions are set out in Deloitte's draft report dated 23 May 2014 (**POL00107160**). Ms Sewell said in her oral evidence that she reviewed the report when she received it: **16 May 2024 105:6-105:7** (**INQ00001148**). The first communication from Ms Sewell to the Board (or indeed anyone) about the substance of Deloitte's findings was the message sent to the Board on 6 June 2014. There is no subsequent communication from Ms Sewell in which she highlighted the risks to POL of Balancing Transactions. If Ms Sewell genuinely believed at the time that the Balancing Transaction issue was as serious as she now claims in her witness statement, she should have notified the Board at the first opportunity. However, it does not appear that she ever notified the Board about her alleged concerns. Nor is there any evidence that Ms Sewell, as she claims, escalated the issue with Fujitsu.

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251. Ms Sewell gave the impression in her evidence that she did not regard the reported ability of Fujitsu to tamper with audit data as a real risk. She described it as a "theoretical possibility" because a number of people at Fujitsu would have been required to collude in any tampering: **16 May 2024 106:8-106:16 (INQ00001148)**. Ms Vennells submits that it is more likely that Ms Sewell took a similar view of the Balancing Transaction issue – that she accepted Fujitsu's explanation that the procedure had been used only once, and did not see Deloitte's findings about Balancing Transactions as a serious risk.

What Ms Vennells was told about the merits of the cases in the Mediation Scheme

252. Ms Vennells was given two key messages in her briefings on the merits of the cases within the Scheme:

a. The first was that the investigation of the cases had not revealed any faults with Horizon. For example:

i. A paper prepared by Chris Aujard on 17 September 2014 to update the Board on the progress of the Mediation Scheme (**POL00027363**) stated that "…we have found nothing in the 73 cases investigated which has raised concerns about faults with the Horizon system, the safety of convictions or [POL's] liability for the losses being claimed by applicants.

ii. A briefing note prepared by Mr Bourke for a call between Vennells and Lord Arbuthnot on 28 October 2014 (**POL00101484**) stated that POL had now investigated 80 cases and in not one of the cases had a fault been established in the Horizon system.

iii. A briefing note prepared by Mr Bourke on 15 November 2014 (**POL00116790**) stated on page 4 that "POL has now investigated 106 case (sic.) afresh – in none of these has a fault with Horizon been established or been even close to establishing".

iv. Ms Vennells' CEO report for the January 2015 Board meeting (**POL00102048**) stated that: We have now completed investigations for all cases in the Scheme. To date, we have found no evidence, nor has any been provided by either an Applicant or Second Sight, of either faults with the

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Horizon system or unsafe convictions, and we are not aware that any convictions have been appealed."

v. Mr Aujard and Mr Davies prepared a paper for the Sparrow Sub-Committee meeting on 12 January 2015 (**POL00022293**). This stated: "To date we have found no evidence, nor has any been advanced by either an Applicant or Second Sight of either faults with the Horizon system or unsafe convictions (on the latter point, every case investigated has been scrutinised by our external criminal lawyers) and no convictions have been appealed."

b. The second theme, which is shown by the documents summarised above, is that the cases in the Mediation Scheme had been reviewed by external criminal lawyers who had concluded that there was no evidence of unsafe convictions within the Mediation Scheme caseload.

253. Mr Bourke, who was involved in preparing some of the documents set out above, and who drafted similar statements for POL's response to the Westminster Hall debate about Horizon in January 2015 (**POL00040791**) stated that these assurances were derived from the work of Cartwright King (who were engaged to review the cases in the Mediation Scheme from a criminal law perspective) and Bond Dickinson (whose role included reviewing the POL and Second Sight reports to produce settlement recommendations): Bourke WS ¶93 (**WITN09830100**).

254. Ms Vennells submits that she was entitled to rely on statements made by the GC and Mr Bourke, a qualified solicitor, for their accuracy. She was also entitled to believe, and did believe, that these statements were an honest and professional view based on the evidence reviewed by POL. Ms Vennells was aware that Bond Dickinson had been engaged by POL as its primary legal advisor in relation to the review, and that POL's investigation work included reviewing transaction data sourced from Fujitsu: PV WS1 ¶1073 (**WITN01020100**). At the time, Ms Vennells had no basis to second guess what she was told about POL's view of the outcome of the investigation.

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What Ms Vennells was told about the work of Second Sight

255. Those who reported to Ms Vennells were highly critical of the work of Second Sight. She has given examples of this in her witness statement. At the Sparrow Sub-Committee meeting on 9 April 2014 (**POL00006565**), it was reported that:

    a. POL had passed around 20 POIRs to Second Sight for review. Second Sight had produced three CRRs which had all been rejected by the Working Group as not sufficient for mediation.

    b. Second Sight had also produced an early draft of their thematic report which Sir Anthony Hooper had dismissed as not ready for Working Group discussion.

    c. The Working Group has tasked POL and Second Sight to focus on the preparation of 2 - 3 cases, which did not raise thematic issues, for discussion at the next face to face Working Group on 1 May with a view to deciding whether those cases should progress to mediation.

256. However, the thematic report was already considerably delayed by this point, and Second Sight did not circulate a complete draft until August 2014: see Ms Vennells' account at PV WS1 ¶¶947-987 (**WITN01020100**). The feedback on the quality of the report was wholly negative:

    a. POL sent a copy of the thematic report to Mr Swil at Linklaters. He described the report as "well below the standard we would expect of a firm of 'experienced accountants' engaged to prepare an independent, evidence-based report" and considered that the draft failed to protect both POL and the applicants' interests (**POL00021814**).

    b. It was reported to Ms Vennells on 15 August 2014 in a draft update to the Board (**POL00101176**) that the report "is of a very poor quality. It lacks evidence and analysis and is unhelpful to applicants and Post Office in terms of assisting a resolution of applications."

257. To provide another example, on 26 October 2014, Mr Bourke prepared a note for Ms Vennells in advance of a call with Lord Arbuthnot on 28 October 2014 (**POL00101484**). He stated that the approach of Second Sight was invariably to recommend cases for

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mediation regardless of the evidence. At paragraph 37 of his witness statement, Mr Bourke has given examples of CRRs produced by Second Sight which gave cause for concern about Second Sight's approach: in each case, Second Sight concluded that the SPM was, or was likely to have been, responsible for the shortfalls. However, Second Sight recommended mediation in each of these cases. Mr Bourke stated that he came to hold the view that Second Sight had lost objectivity, and this view was shared by others at POL and Bond Dickinson: Bourke WS ¶38 (**WITN09830100**).

258. Ms Vennells submits that she was entitled to accept and rely on the opinions of the members of the team who were close to the detail of the investigation about the performance of Second Sight.

Sir Anthony Hooper's evidence about SPMs' guilt and miscarriages of justice.

259. Sir Anthony stated in his evidence that he had told Ms Vennells and, he believed, Ms Perkins, that it was unlikely that that the cause of the losses suffered by POL was theft by SPMs, a point that he repeated in his oral evidence: WS ¶6 (**WITN00430100**); **10 April 2024 134:12-135:6** (**INQ00001127**). Ms Vennells did not see Sir Anthony's witness statement before she made her own witness statements and was therefore not able to comment on what he claims to have told her. However, there is no documentary evidence that Sir Anthony said anything along these lines in any meeting with Ms Vennells or Ms Perkins. Indeed, the documentary evidence of discussions between Ms Vennells and Sir Anthony shows no trace of him giving an opinion on the likelihood that losses were not caused by theft:

    a. (**POL00100338**) is a file note of a meeting between Ms Vennells, Mr Aujard, and Sir Anthony on 24 February 2014. In paragraph 7 of the note, he is recorded as discussing the level of damages that could be payable by POL on the hypothesis that "the evidence show[s] that POL had not acted properly." This was a challenge (which contributed to POL's decision to commission the advice from Linklaters) to POL's assumption that its potential exposure to damages claims was small. There is no record in the minute of Sir Anthony expressing a view on the merits of past POL prosecutions or allegations of theft against SPMs.

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b. On 18 May 2014, Ms Vennells sent an email to Mr Aujard, Mr Davies, and Mr Edwards to update them on a meeting with Sir Anthony (**POL00116566**). The meeting was concerned with the progress of the Mediation Scheme. Again, there is no hint in the email that Sir Anthony gave his views on past prosecutions or miscarriages of justice. It records that "He is keen to retain his independence and although happy to share off the record conversations, will not give a view on hypothetical situations that he doesn't yet need to consider." Ms Vennells also wrote that she "…gave him the opportunity to express any views on PO performance and thanked him for helping to shape some of our reports; to which he replied that really they had been good and he had only asked us to be clearer in calling out where there was evidence of 'hands in the till'. He said the PO reports are thorough and name checked Angela but made the point it had taken everyone by surprise how much work was involved…"

260. There is no evidence that Sir Anthony told POL's leadership that he believes losses were not due to theft and that there may have been miscarriages of justice. A communication from a figure such as Sir Anthony, on issues of such importance, should have been recorded in writing – not least by Sir Anthony himself would have had a real impact on Ms Vennells and the Board. The absence of a documentary record suggests that Sir Anthony did not express himself to Ms Vennells or Ms Perkins in the way he now recalls. Ms Vennells does not recall any such communication from Sir Anthony.

Provision of information to POL

261. It has been suggested during the Inquiry that POL was slow or obstructive in providing documents and information to Second Sight. However, only three requests for information and documents were escalated to Ms Vennells during the Mediation Scheme. These were as follows.

262. Information about suspense accounts: Shortly after Mr Cameron joined POL in January 2015, he was asked by Mr Aujard for help in answering questions by Second Sight about the operation of POL's suspense accounts. Their questions focussed on whether monies in POL's suspense accounts were monies which could be due to SPMs: Cameron WS ¶159-160 (**WITN09840100**). Over the following weeks, Mr Cameron familiarised himself with the concerns raised by Second Sight and the operation of the

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suspense accounts: Cameron WS ¶¶172-185 (**WITN09840100**). This workstream came to Ms Vennells' attention on 20 January 2015, when Ms Crowe informed her that Second Sight were pressing for a meeting to discuss "suspense accounts" and that "there is something of a history to this matter" (**POL00109892**). Ms Crowe stated that Mr Cameron had been tasked with providing the information. Separately, on 29 January 2015, Mr Warmington emailed Ms Vennells with a list of possible discussion points, including a "concern about the operation of Post Office's Suspense Account and the possibility that Post Office may have benefitted from amounts charged to Subpostmasters" (**POL00109933**). Ms Vennells states that she was ultimately briefed by Mr Cameron that Second Sight had misunderstood the nature of the suspense accounts, which held client money as opposed to unreconciled balances: PV WS1 ¶193 (**WITN01020100**). It is also Mr Cameron's evidence that he became satisfied that there were no grounds to be concerned about the operation of POL's suspense accounts. He states: "If there were unresolved credit transactions due to Postmasters stuck in suspense, there would be a large balance of older items, however the two material accounts we investigated had no balances over 6 months old. There also was no evidence from the investigations undertaken by POL that significant credits were being released from SAs to Profit & Loss.": Cameron WS ¶185 (**WITN09840100**).

263. Prosecution files: The evidence strongly suggests that Ms Vennells was unaware that Second Sight had requested access to POL prosecution files, including privileged documents, before she attended the BEIS Select Committee to give evidence on 3 February 2015. In an email to Mr Richardson of Bond Dickinson on 5 February 2015 (**POL00158202**), Ms Vennells stated: "It was tough but I felt that other than the issue of withholding prosecution files, which caught us completely by surprise, we did as you said…" Further, an email from Ms Crowe to Mr Cameron, Mr Davies, Ms MacLeod and Mr Aujard on 27 February 2015, which was copied to Ms Vennells (**POL00102245**) states that a "clear major breakdown in communications between legal and the CEO surfaced at the Select Committee on access to legal files."

264. Ms Vennells appears to have been given an explanation for the disagreement between POL and Second Sight for the first time in writing in an email from Mr Wechsler on 12 February 2015 (**POL00102154**). Although the explanation is framed as the lines that POL intended to take if Second Sight continued to push for disclosure of privileged

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information at the Working Group meeting on 13 February 2015, it is clear that POL was resisting disclosure of privileged material (and only privileged material) from the files on grounds of privilege.

265. This was followed by Ms Crowe's email on 27 February 2015 (**POL00102245**) from which it is again clear that POL was resisting disclosure of privileged material on the grounds that POL had chosen not to waive privilege.

266. Bracknell emails: In his email on 12 February 2015 (**POL00102154**), Mr Wechsler addressed Second Sight's request for emails from staff based at Fujitsu's facility in Bracknell. This point was presented as a practical issue about the scope of a disclosure request by Second Sight which POL considered should be clarified. In her update on 27 February 2015, Ms Crowe stated that she had asked Second Sight to identify the questions that Second Sight were attempting to answer by reference to these emails. Second Sight said that they were relevant to whether there was a test area in Bracknell in 2008 in which there was access to live data. Ms Vennells states in her second witness statement that she was aware that Second Sight had requested further documentation in relation to Bracknell in 2013, but she was not aware that this remained a live unresolved issue in 2015: PV WS2 ¶30 (**WITN01020200**). Ms Vennells submits that this appeared to be an operational issue in which POL had questioned the scope of the request as opposed to the principle of the request.

POL's decision not to mediate criminal cases

267. On 10 March 2015, POL announced that it would agree to mediate all cases remaining in the Mediation Scheme except for cases where the applicant had been the subject of a court ruling (**POL00387092**). This decision was taken after serious deliberation and on the basis of legal advice:

    a. At paragraphs 5.54-5.55 of their March 2014 advice (**POL00006354)** Linklaters discussed settlement with Mediation Scheme applicants who had criminal convictions. They advised that "the only basis as a matter of law on which the Post Office should entertain a claim for the repayment of sums claimed from the SPMR is if it were to conclude that there were doubts about the evidence on which the conviction was based".

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b. The approach to the investigation of cases where the applicant had been convicted was discussed at the Sparrow Sub-Committee meeting on 9 April 2014 (**POL00006565**). The minutes state that POL did not anticipate mediation being appropriate for cases which have gone through either the criminal or civil courts. These cases accounted for approximately a third of the caseload.

c. At a meeting on 17 November 2014, Mr Letwin MP proposed to POL that it should apply a presumption that it would mediate all cases in which Second Sight had recommended mediation: PV WS1 ¶1082 (**WITN01020100**). A speaking note prepared by Mr Lambert to assist Ms Vennells in explaining the proposal to Ms Perkins (**POL00116824**) pointed out that "'Pre-agreeing' [to mediation] would also force us to mediate in criminal cases where the legal processes have not been exhausted. We have strong legal advice suggesting we should not take this course."

d. On 11 February 2015, Ms MacLeod and Mr Day prepared a paper for the Sparrow Sub-Committee on POL's options in relation to the Mediation Scheme (**POL00102152**). They recommended a fundamental change whereby POL would adopt a presumption of mediation in all non-criminal cases. They proposed in paragraph 3 that POL should:

> "- Adopt a presumption that Post Office will mediate all non-criminal cases currently in the Scheme.
>
> - Make clear that we do not intend to mediate criminal cases, except to the extent there are areas in a case which do not relate to those which led to conviction. (Thus far we have seen no cases where the applicant has a criminal conviction where mediation has been considered appropriate). However, should we receive advice that it is safe to do so, we would also offer "structured discussion" to applicants with criminal convictions, the purpose of which would be to explain to the applicant.
>
> - Release Second Sight from their engagement with Post Office, but make clear that Post Office will meet its commitment to any applicant wishing to avail themselves of a review by Second Sight of their case by providing the necessary funding to do so on an individual case by case basis.
>
> - Continue to engage with Second Sight pro tem on issues relating to individual cases: including issues such as suspense accounts where they relate directly to individual cases."

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e. Paragraph 3.7 of the paper stated that Ms MacLeod and Mr Day had ruled out mediating all cases including criminal cases "on the basis of very strong legal advice that this would expose POL to untenable risks in relation to convictions: we could also be accused of bad faith as mediation cannot by its nature overturn convictions." Ms Vennells was not in a position to gainsay this advice. Further it was her understanding that criminal cases would still be reviewed at the request of the applicant, even if they did not go forward to mediation.

f. The Sparrow Sub-Committee met on 18 February 2015 (**POL00006574**). It agreed that the criminal cases in the Mediation Scheme should not be put forward to mediation. The Committee agreed that if all non-criminal cases went to mediation there would be no future role for the Working Group which would therefore be dissolved. Second Sight would continue to work with POL but only in reviewing cases where the applicant wished them to do so. The Board was provided with a copy of Ms MacLeod and Mr Day's paper on 2 March 2015 (**UKGI00003467**) and approved the Sparrow Sub-Committee's recommendation by email on 3 March 2015 (**UKGI00003501**); (**UKGI00003467**).

g. On 10 March 2015, POL terminated its arrangements with Second Sight, save that POL would fund Second Sight to produce CRRs for those applicants who requested them, and that Second Sight was asked to continue work on a final thematic report during the notice period (**POL00000219**).

268. The Mediation Scheme was not a sham. From Ms Vennells' perspective the Mediation Scheme was a good faith attempt to resolve the issues between POL and the SPMs and large amounts of money and effort were invested to achieve that objective. Ms Vennells acted at the time in reliance on the legal advice she received and the opinions of those closest to the investigation about what the investigation had revealed about Horizon and the merits of the claims.

Beds And Remote Access During The Mediation Scheme

269. Ms Vennells was not made aware of any BEDs in Horizon during the Mediation Scheme. There were two incidents in relation to remote access. The first was the Deloitte assurance work in 2014 (addressed above). The second occurred when Ms Vennells was

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preparing to give live evidence to the BEIS Select Committee, scheduled for 3 February 2015.

270. On 30 January 2015, Ms Vennells sent the following email to Mr Davies and Ms Sewell (**POL00029812**):

> "1) "is it possible to access the system remotely? We are told it is." What is the true answer? I hope it is that we know this is not possible and that we are able to explain why that is. I need to say no it is not possible and that we are sure of this because of xxx and that we know this because we have had the system assured. 2) "you have said this is such a vital system to the Post Office, what testing do you do and how often? When was the last time?
>
> Lesley, I need the facts on these - I know we have discussed before but I haven't got the answer front of mind - too many facts to hold in my head! But this is an important one and I want to be sure I do have it. And then Mark, to phrase the facts into answers, plus a line to take the conversation back up a level - ie., to one of our narrative boxes/rocks."

271. The questions put to Ms Vennells about the email in her oral evidence focussed on the phrase "I need to say no it is not possible…": **22 May 2024 181:9-183:16** (**INQ00001151**). However, read as a whole, the email is a request for correct factual information, as opposed to a convenient or agreed answer. In the first paragraph, Ms Vennells asked, "what is the true answer?" and in the second, she made an explicit request for "the facts".

272. This is how Fraser J interpreted the email in the Horizon Issues Judgment (**UKGI00025444**). He stated at paragraph 521 that: "Ms Vennells obviously needed to know whether the answer matched her understanding, which was – as she put it, both 'I hope' and 'I need' -- that it was not possible to access the system remotely." He returned to the email in paragraphs 524 and 525:

> 524. …. The question from Ms Vennells was very straightforward. It was as follows, using her words, and separating out each clause of the enquiry:
>
> 1. "Is it possible to access the system remotely? We are told it is."
>
> 2. "What is the true answer?"

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> 525. Both of these are really very simple questions. Question 1. means can it be done, because Ms Vennells is being told it can be done. Question 2, "what is the true answer?" means she is seeking the true answer to question 1. This is not complicated, either in linguistic, computing or even business terms, nor is it difficult to understand. She then expressed her aspirations in terms of what the true answer might be. "I hope it is that we know this is not possible and that we are able to explain why that is. I need to say no it is not possible." (emphasis added)"

273. Ms Vennells does not recall any oral briefing in response to her questions, and there is no evidence that she received one: PV WS1 ¶1304 (**WITN01020100**). On 2 February 2015 at 17:54, Ms Vennells received an email from Ms Hill (**POL00117096**) attaching an addendum to her briefing pack (**POL00117097**). The section on remote access in the addendum appears to derive in large part from an email from Mr Lenihan to Ms Corfield and Mr Underwood on 30 January 2015 in which he set out bullet point answers prepared by James Davidson (**POL00029812**). Ms Vennells was not sent the email chain at (**POL00029812**) and therefore did not see the technical details discussed by Mr Underwood, Mr Davidson, and Mr Lenihan. Ms Vennells agreed that it is very likely that she read the addendum, though she cannot recall doing so. However, she could not say how much she took in: **22 May 2024 189:10-189:15** (**INQ00001151**).

274. Reading the document cold, without the benefit of hindsight, it is understandable why it did not cause Ms Vennells to revise her belief that there was no functionality in Horizon for either POL or Fujitsu to edit, manipulate or remove transaction data once it had been recorded in a branch's accounts: PV WS2 ¶27 (**WITN01020200**). This very assertion appears in the first set of bullet points under the heading "Remote tampering". While the structure of the document is unattractive, as Ms Vennells acknowledged, it is not obvious that the assertion about the lack of functionality was, on the face of the document, an untruth which was contradicted by the section on Balancing Transactions. Another reading of the document is that the sections were intended to be consistent with each other: therefore, the Balancing Transaction procedure should be understood as not involving the editing, manipulation, or removal of branch data once it had been recorded in a branch's accounts. Ultimately, this was a technical issue which Ms Vennells was not equipped to understand without expert assistance. She was given very little assistance by this note. Ms Vennells submits that it does not establish that she knew that it was incorrect that POL and Fujitsu lacked the ability to edit, manipulate, or remove transaction data.

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The Parker Review

275. Ms Vennells was asked very few questions by CTI or core participants in respect of the independent review commissioned in 2015 by Tim Parker in respect of Sparrow and Horizon (the "Parker Review" or "Jonathan Swift QC's report"). Her involvement in the Review was minimal. This is because Mr Parker had agreed with Baroness Neville Rolfe that he would look afresh at the way in which Sparrow and Horizon had been dealt with by POL.

276. Mr Parker deliberately kept Ms Vennells out of the loop[65], ensuring that the Review was independent from those who had been involved in Sparrow / Horizon at POL. She was not copied into correspondence instructing Jonathan Swift QC and Christopher Knight, nor consulted on the terms of the instructions.[66] That is not a surprise, given that the Chairman had undertaken to take a fresh look at the Post Office's handling of the Horizon-related complaints as a newcomer to the business[67] and was an independent non-executive chairman[68] conducting the review independently.[69] Ms Vennells did not see the final review document at the time,[70] but was sent an email by Jane MacLeod summarising counsel's recommendations.[71] She then addressed the Board on 22 January 2016[72], based on the limited information she had as to what the recommendations were likely to be, shortly before the Parker Review was finalised.[73]

The GLO Proceedings

277. In April 2016, Ms Vennells became aware that proceedings which would be pursued under a Group Litigation Order had been issued against POL in the High Court ("GLO Proceedings")[74] on 11 April 2016. The first substantive briefings given to Ms Vennells regarding the GLO Proceedings were two papers prepared by Ms MacLeod and Mr

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[65] **(WITN01020100/531)**, ¶1243
[66] **(WITN01020100/530-531)**, ¶1242
[67] **(POL00158282)**
[68] Tim Parker letter of appointment, 5 July 2015 **(POL00363005)**
[69] **(POL00356095)**
[70] **(WITN01020100/533-534)**, ¶¶1251-2; **22 May 2024 12:1-12:4 (INQ00001151)**
[71] **(POL00103110)**; **(POL00103111)**; **WITN01020100/533** ¶1249
[72] **03 July 2024 106:10-107:20 (INQ00001170)** Evidence of Tim Parker
[73] **(POL00158304)**
[74] **(POL00103165)**; **(WITN01020100/561)**, ¶1309

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Williams[75] for the May 2016 Group Executive and Board meetings respectively, the letter of claim having been received by POL on 28 April.[76]

278. Strategic legal questions were identified immediately by Ms MacLeod and Mr Williams, including whether POL should agree to the Claimants' proposal of a GLO. As an example, the advice contained in the briefing papers was that it was not possible for POL to wait to see the pleadings before taking a position on this issue.[77] Nothing in the paper sought a decision from the Board on this question, nor on any matters. The Group Executive was asked to endorse the *"Claim Management proposal"*.[78]

279. On 21 May 2016, Ms Vennells emailed Ms MacLeod and Mr Bourke with six numbered questions arising from the papers.[79] Ms Vennells recognised that some of these questions built on *"the GE discussions"* but she wished to *"have the answers documented"*. Ms Vennells carried out the role required of her through this correspondence: she sought to establish that POL would *"handle it well"* and gave her staff her vote of confidence in their ability to do so, whilst probing and digging to ensure that POL would *"put on your blackest hats and think through the worst outcomes"*. Ms MacLeod responded with written answers to the questions and an assurance that she would be in a position to address the Board on these points at the next meeting on the following day. Ms MacLeod did so.[80]

280. Specifically, Ms Vennells asked Ms MacLeod about who it was proposed would handle this litigation on behalf of POL:

> 2) who/what is our internal resource/governance?
>
> The PO legal team (Rod Williams) and myself will work with BD. As set out in the GE board paper, and as discussed and approved at the GE meeting on 13 May, Tom Moran will be the internal 'client' for these purposes and his role will be to ensure that the overall strategy of the litigation protects PO, its network and attractiveness to future agents/postmasters. Both in this and in the management of the litigation, he will be supported by a Steering Group which will comprise representatives from across the business. At GE we discussed the

[75] **(POL00117704); (POL00006805)**
[76] **(WITN10010100/139), ¶251**
[77] **(POL00006805/2), ¶10**
[78] **(POL00117704/5)**
[79] **(POL00103200/3)**
[80] **(POL00027219); (POL00027218)**

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following as proposed members: Tom Wechsler (representing you), Angela van den Bogerd, Mark Davies, Patrick Bourke, a representative from Finance (tbc), as well as Rod, myself, representatives from BD and when necessary, Tony Robinson QC. Key/strategic decisions will be discussed at GE.

281. From the outset of the GLO Proceedings, Ms Vennells conducted her role in an appropriate way. The Inquiry's experts state that a CEO is accountable to the Board for *"running the Company, providing operational leadership, management and oversight of all functions, departments and delegations"* and *"creating an organisation structure… which is fit for purpose for the business, reflecting strategy, priorities and risks, so that appropriate operational oversight and direct management is secured and maintained"* notwithstanding *"ultimate Executive accountability resting with the CEO"*.[81] By satisfying herself that POL had a team with appropriate experience and expertise taking responsibility for the GLO Proceedings, with the facility for her to have input directly through the Group Executive and indirectly through Tom Wechsler on the Steering Group, Ms Vennells fulfilled the expectations which the Inquiry's experts consider a CEO should meet, at ¶2.2.31(b) and (c).

282. It is not the role of the CEO to make every decision, however consequential, nor to know the details of every decision which she has delegated. That would be unworkable.

283. Through the exchange with Ms MacLeod on 21 May 2016, Ms Vennells set her expectations for POL's handling of the GLO Proceedings, and tasked specific work to be carried out which she considered would assist Ms MacLeod and her colleagues in making appropriate decisions as the litigation progressed. That is the role of the CEO.

Management and oversight of the GLO.

284. As the Inquiry has heard, Ms Vennells had no prior experience of leading a company which was the subject of serious or group litigation.[82] That itself cannot be a failing; few CEOs would have such experience. However, she had the benefit of what she understood to be an experienced GC, a respected firm of solicitors and a team of highly qualified specialist commercial barristers.

[81] **(EXPG0000006/28)**, ¶2.2.31(b) and (c)
[82] **(WITN01020100/571)**, ¶1323

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285. The only criticism which was put to Ms Vennells in oral questions directly about her involvement in the GLO Proceedings was that she *"set the tone"* for POL's approach to the litigation.[83] Ms Vennells was not asked whether, for example, she accepted specific criticisms of her decision-making or her management and oversight of the GLO. In response to that one question Ms Vennells said (**emphases** added):

> Q. 2017. The Post Office set about its strategy of fighting tooth and claw for its own reputational interests over those claimants at the High Court, and adopted this strategy, as the High Court judge identified. That happened under your leadership, Ms Vennells: all of this did. You set the tone, didn't you, Ms Vennells, and the tone was "Let's eliminate them. Let's get rid of these bugs in the system, the subpostmasters." That's what you set in place, wasn't it, Ms Vennells?"
>
> A. Is that a question, because I'd like to answer it, if it was.
>
> Q. Yes, the "wasn't it, Ms Vennells" was the question, I think you may have noticed.
>
> A. **I did not set a culture like that. I did not lead the litigation**. I remember reading this – well, actually, **I don't know if I saw this particular document because I was not personally involved in the litigation steering committee**. There was a Board subcommittee of which I was one member. I had two conversations with Jane MacLeod, and I'm disappointed – I don't know the reason and I'm making no other point then – I'm disappointed that she can't come and give evidence to the Inquiry because I think it is important that the Inquiry understand more around the approach to the Group Litigation.
>
> But I had two conversations with Jane that I remember clearly. They weren't documented because a lot of the -- the way that you work as a Chief Executive is you have conversations as you're going between meetings and things but, specifically, **I sat down with Jane twice on this to say that I was very uncomfortable that the Post Office was going through this. The Post Office didn't call the Group Litigation. It was set in place by the postmasters – and I understand why and I'm very pleased that it was, so that we've got to where we are today -- but it wasn't a policy that I put in place, and the questions I asked of Jane on those two occasions were, "This feels completely wrong to me, what can we do? We should not be in the process where we are fighting in court with subpostmasters".**

[83] **24 May 2024 89:5 – 91:2 (INQ00001153)**

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> And her first response, when I asked her the first time was that -- I think it was that we hadn't got enough information at this stage but it was very likely that we would try to settle. And the second time that I asked her, her view was -- and the view of the leading counsel that we took -- that, actually, the only way to solve this was to take it through.
>
> **So I regret hugely the Group Litigation** and I've seen all of the paperwork behind it and, in view of the judgments that were taken and where we are today, it is unacceptable reading.

286. That response is set out in full in this Closing Statement because it describes Ms Vennells' position in her own words and with accuracy: Ms Vennells may have been the leader of the organisation, but there is a material distinction between that and stating that Ms Vennells led the organisation's litigation.

287. Ms Vennells' approach to the GLO Proceedings, her personal perspective and that which she sought to instil in her staff are reflected in an email she sent to Ms MacLeod and Mr Houghton (copied to Mr Davies, Mr Williams and Mr Cameron) on 14 February 2019 as the Common Issues Trial approached.[84] This email was sent in response to Ms MacLeod arranging for Mr Rob Houghton, the CIO, to meet with the counsel team acting for POL *"to assist with the strategic positioning"*, particularly in respect of the Claimants' expert evidence. Ms Vennells described a conversation with Mr Houghton:

> "I said to Rob earlier this week, whilst he can't (and mustn't) steer the legal strategy, he should understand and be comfortable with the approach being taken and feel that he has had the opportunity to feed in any thoughts or challenges. That may or may not be welcome news to our legal advisers but it's important in two respects: managing internal board confidence and secondly, because he knows what he's talking about.
>
> "The board have great confidence in both of you: we have to know that you have worked well together and that we have had the opportunity to incorporate Rob's views into the process. If you disagree that is fine, and the final call must be legal."

288. This email is evidence of Ms Vennells:

[84] **(POL00111672)**

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a. Encouraging a subject matter expert in POL to be open and frank with his views, whatever they might be;

b. Recognising the value in challenging and testing the legal advisers' decisions;

c. Appreciating that the board should have confidence in the decisions being taken, but that the board could not have that confidence without the knowledge that decisions are being tested properly; and

d. Reflecting the reality that key decisions in the litigation would be taken by POL's legal team, and particularly its General Counsel.

289. The division of roles between Ms Vennells as CEO and Ms MacLeod as General Counsel in practice is visible in the way that the Board was typically briefed in respect of the GLO Proceedings. For example, Ms Vennells' CEO Report for the 26 September 2017 Board Meeting contains the following on the GLO Proceedings (**emphasis** added):[85]

> Postmaster Litigation
>
> On 19 October there will be a Case Management conference (CMC). At this Court hearing, a Judge will decide on the strategic direction of the Group Litigation for the next 6-24 months following representations from both parties. **We will provide an update on the implications at the Board**.

290. The minutes of that meeting, which Ms Vennells attended, at POLB 17/68 include a "Litigation Update" in these terms (**emphasis** added):

> (a) The Board received a verbal update on the Postmaster Litigation **from the General Counsel**, noting that the Case Management Conference would be held on 19 October, and the outcome of the CMC would be directions given by the Court as to the conduct of the case over the next 12-18 months. There were key strategic issues to be decided as to the Post Office's preferences for the sequence in which legal arguments were to be addressed, and the Post Office had receive legal advice as to the preferred sequence.
>
> (b) The Board discussed the advice and its implications, and approved the proposed strategy.

[85] (**POL00250666/17**)

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291. This is an example of the typical way in which the Board received updates on the GLO Proceedings and received legal advice for consideration. Although it was for Ms Vennells to provide oversight of the GLO Proceedings, as with any of the business's key activities, it was not for Ms Vennells to give legal advice to the Board. It would also have been unrealistic, and inefficient, for Ms Vennells to seek to have the same level of knowledge of the proceedings as her General Counsel.

292. Ms Vennells did not see the Defence and Counterclaim in the generic proceedings before they were filed on 18 July 2017[86] and did not approve the documents.[87] These were the delegated responsibility of the Steering Group, made up of subject matter experts [88] who had access to external advice from experienced lawyers and could raise factual questions with Deloitte and Fujitsu as they considered appropriate.[89] Ms Vennells attended a conference with leading counsel on 29 September 2017, and took the opportunity to ensure that she understood the pleadings.[90] Again, Ms Vennells delegated responsibility across the business in a realistic and appropriate way, whilst ensuring that she maintained an understanding of the GLO Proceedings. These actions are consistent with the Inquiry's Experts' expectation that a CEO will engage in *"Active management and reporting of the corporate risk register, in light of changing circumstances."*[91]

293. During the course of the GLO Proceedings, Ms Vennells began and completed her exit from the business.

294. Ms Vennells was not part of the Steering Group but had a representative, Tom Wechsler. Ms Vennells was satisfied that the members of the steering group were the *"right group of people to manage the litigation"*.[92] However, Ms Vennells recognised that she had an important role to play in key decisions. For example, Ms Vennells spoke directly with David Cavender KC about the "tone" of POL's case ahead of the Common Issues trial[93] and ensured that the Board was briefed on the proceedings by the external legal team the week before proceedings commenced.[94] Matters such as the "tone" of POL's voice were

[86] **(WITN01020100/641)**, ¶1467
[87] **(WITN01020100/642)**, ¶1470
[88] **(WITN01020100/577)**, ¶1337
[89] **(WITN01020100/643)**, ¶1471
[90] **(WITN01020100/641)**, ¶1468
[91] **(EXPG0000006/29)**, ¶2.2.31 (h)
[92] **(WITN01020100/569-571)**, ¶1322
[93] **POL00258630/1**
[94] **POL00258640/1; POL00021558**

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matters on which Ms Vennells, as a non-lawyer, could add value and where she appropriately involved herself in the detail of decisions being taken. A CEO could not be expected to add such value in relation to questions of law on which, quite properly, the GC took the lead with Ms Vennells and the Board receiving appropriate briefings.

295. When Ms MacLeod was not available, Bond Dickinson and its instructed counsel continued to run the proceedings. In advance of the 30 October 2018 Board meeting, Ms Vennells wrote in an email to Board members *"In Jane's absence, I have asked David Cavender QC (lead counsel) and Andy Parsons (lead lawyer from WBD) to come to the Board and brief us on the strike out judgement, 'tone of voice' challenge from the judge, claimants' draft CIT opening submission, and if we have time – Horizon trial preparation."*[95] This is an example of the reliance which the Board and Ms Vennells placed on external lawyers as well as the GC and their team. Bond Dickinson had long been trusted advisers to POL (see above at ¶¶ 79.i; 79.m; 216; 217; 219; 222; 224; 225; 228; 229; 231; 252; 253; 256; 262).

296. As for Mr Wechsler, she *"trusted him to use his judgment about whether any discussions or decisions by the Steering Group should be brought to [her] attention"*.[96] Ms Vennells also received regular updates, at one-to-one meetings and ad hoc discussions, with Jane MacLeod.[97] Ms MacLeod was the primary channel of communication to Ms Vennells, which Ms Vennells understood to be because Ms MacLeod was taking careful measures to ensure that POL's legal professional privilege was retained throughout these conversations.

PV's knowledge of and involvement in disclosure; factual witness statements; and expert evidence.

297. Ms Vennells played no material role in decisions regarding disclosure, or statements of factual witnesses and experts, in the GLO Proceedings. She does not recall being asked to be involved in decisions about disclosure,[98] and no questions were put to her in oral evidence on this topic. Ms MacLeod, as General Counsel, took the view, set out in her witness statement for this Inquiry, that in respect of whether or not to call somebody like

[95] **POL00258640/1**
[96] **(WITN01020100/569-571)**, ¶1322
[97] **(WITN01020100/569-571)**, ¶1322
[98] **(WITN01020100/675)**, ¶1565

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Mr Jenkins as a witness *"my expectation was that this would have been decided by the legal team".*[99] The Inquiry may, in fact, have been surprised if it had heard evidence that Ms Vennells had personally made decisions regarding disclosure and witness evidence. That is far from the role of the CEO.

Recusal application

298. Ms Vennells was aware that Lords Grabiner and Neuberger *"were very strong that the Post Office had a very good case"* [100] in respect of an application that the Judge should recuse himself, and in respect of the appeal. Lord Grabiner went as far as to say that there was a "*duty*" on POL to seek recusal and that it was *"essential"*.[101] Ms Vennells was not one of the members of staff at POL who took the decision to make the recusal application.

299. She considered that it was an extraordinarily difficult decision and candidly recognised in her oral evidence that although she had not been involved in the conversation, she would probably have arrived at the same conclusion as they did if she had been.[102] There was clear legal advice from two exceptionally experienced lawyers (one with the full gamut of judicial experience) that the recusal application ought to be made. These were lawyers whom Ms MacLeod recognised and relied upon as *"highly experienced litigators and whose advice [she] trusted"*. Ms Macleod does *"not recall any instances where [she] went against the legal advice"* received from external lawyers as expert advisers.[103]

Post-Conviction Disclosure

300. In the Chair's statement relating to Written Closing Submissions, he invited Core Participants to indicate whether they agreed or disagreed with his provisional view that prosecutors were obliged to comply with the duty of disclosure as described in *R (on the application of Nunn) v Chief Constable of Suffolk Constabulary and another* [2014] UKSC 37 ('*Nunn*') from 1 January 2000 at the latest, despite the judgment in *Nunn* articulating the duty in 2014..

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[99] **(WITN10010100/174)**, ¶331
[100] **23 May 2024 208:04-05 (INQ00001152)**; **WITN10640103**
[101] **WITN10640100**, ¶9; **POL00022886/2**
[102] **23 May 2024 207:21-208:20 (INQ00001152)**
[103] **(WITN10010100/128)**, ¶232

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301. Ms Vennells' legal team agrees that the common law duties of disclosure, post-conviction, as set out in *Nunn*, were in existence as of 1 January 2000. It is agreed that prosecutors ought to have known of the existence of the duty during the period of time under consideration by the Inquiry. Whether in fact they did know is a matter of fact for the Chair.

302. Ms Vennells was not aware of the existence or scope of that duty, nor the manner in which it should have been exercised. POL legal and external lawyers were responsible for the discharge of that duty. Ms Vennells does not advance submissions as to whether the advice (or substance of the advice) of Mr Simon Clarke dated 15 July 2013 should have been disclosed to some or all of those convicted on the basis of Horizon data.

Culture

303. There are numerous documents which show that Ms Vennells was not complacent about the need for cultural change at POL and to improve the support that POL gave to SPMs, both before and after the publication of the SSIR. At the first Board meeting after the publication of the SSIR, on 17 July 2013, Ms Vennells stated that the SSIR had identified "cultural issues which had to be addressed to improve the support we gave to sub-postmasters. The CEO stressed that this was now a catalyst to make changes in the Business" (**POL00021516**). Ms Vennells' personal objectives for 2013/2014 (**POL00158097**) included "in light of the Second Sight report and associated insights, ensuring the culture and structure of our network intervention teams are re- orientated around the needs of sub-postmasters and other agents…"

304. Ms Vennells initiated two significant initiatives to implement these changes. The first was the Branch User Forum, which was established in 2013 to provide a structure through which SPMs could raise concerns and ideas directly with POL management. The second was the Branch Support Programme, and subsequently, the Business Improvement Programme. It is not correct that Ms Vennells was dismissive of SPMs' concerns. As can be seen from the Board meeting on 17 July 2013, it was the explicit purpose of these programmes to listen to and respond to the concerns reported in the SSIR. This approach continued into the Mediation Scheme. (**POL00213728**) is an agenda item dated 11 December 2014 for a meeting of the team working on the Business Improvement Programme. The objectives of the discussion were to ensure that POL had considered

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and, where appropriate, put in place policy and process improvements in response to the thematic issues identified by Second Sight and the individual SPM cases.

305. Ms Vennells accepted in her evidence that she was given information which was incorrect and which CTI described as POL "folklore". She was asked what it says about an organisation that "folklore" was allowed to develop and perpetuate without anyone checking the real facts. Ms Vennells stated that this was valid in hindsight but, at the time, "I believed that I was getting information from the people who were employed to give me the best advice because of their expertise. I didn't believe that any of it is statements were folklore at all": **22 May 2024: 153:11-154:25 (INQ00001151)**. This is fundamental to Ms Vennells' position at the time. The individuals who reported to her had subject matter expertise in law, IT, and the detail of POL's operations. She was entitled to rely on them to provide her with correct information and their honest professional opinions. There was no reason for her to disbelieve them. Ms Vennells acted in good faith on what she was told. Based on what she was told, she understood that there were cultural issues to address and process improvements to be made. The information that she was given, and relied on, about the integrity of Horizon and the safety of past prosecutions was incorrect, as the evidence before the Inquiry has shown. However, Ms Vennells' personal commitment to dealing with the issues that she understood had emerged from the SSIR and the Mediation Scheme is evident from the documents.

Conclusion

306. Ms Vennells cannot, and does not, try to hide from the fact that whilst CEO she did not manage to uncover the truth about the extent of the bugs, errors and defects in Horizon as found by Fraser J. This is a matter of deep and constant personal regret to Ms Vennells, as is the fact that the convictions of the SPMs were not overturned sooner.

307. Despite Ms Vennells repeatedly attempting to resolve concerns of the SPMs during her leadership, she simply did not get the information which she ought to have been given by her senior team, whom she trusted and to whom she delegated responsible roles. Ms Vennells does not know why key information was not passed on to her. She believed her senior team and GCs to be working hard and doing their best to investigate the SPMs' complaints in good faith. She had faith in them and, as far as she was concerned, had

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good working relationships with them. She is devastated by the fact that information was not shared with her. She has no desire to point the finger at others, nor to speculate as to why information was not shared. She trusts that the Chair and Panel will establish the true extent of the information that was not shared and, perhaps, why it was not shared.

308. Notwithstanding that the evidence phase of this Inquiry has concluded, Ms Vennells will continue to assist the Chair's investigation in any way she can.

9 December 2024

SAMANTHA LEEK KC
AARON MOSS
5 ESSEX CHAMBERS

PAUL CASEY
FOUNTAIN COURT CHAMBERS